RENT AND MORTGAGE INTEREST RESTRICTIONS.

THIRTEENTH EDITION.

By THE EDITORS OF "LAW NOTES."

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RENT AND MORTGAGE INTEREST RESTRICTIONS.

BEING

THE INCREASE OF RENT AND MORTGAGE INTEREST (Restrictions) ACT, 1920, THE RENT RESTRICTIONS (Notices of Increase) ACT, 1923, THE RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923, THE PREVENTION OF EVICTION ACT, 1924, and THE RENT AND MORTGAGE INTEREST RESTRICTIONS (Continuance) ACT, 1925, as continued in operation by the EXPIRING LAWS CONTINUANCE ACTS, 1927 and 1928.

FULLY ANNOTATED, INCORPORATING THE DECISIONS ON THE SUBJECT, AND OTHER RELEVANT STATUTORY ENACTMENTS; WITH AN INTRODUCTORY SKETCH OF THE EFFECT OF THE ACTS; AND APPENDICES GIVING THE TEXT OF THE REPEALED ACTS AND THE RULES MADE UNDER THE ACTS.

BY

THE EDITORS OF "LAW NOTES."

THIRTEENTH EDITION.

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PREFACE

TO THE THIRTEENTH EDITION.

SINCE the publication of the Twelfth Edition of this book the operation of the statutes with which it deals has been prolonged by the Expiring Laws Continuance Act, 1927, and again by the Expiring Laws Continuance Act, 1928. There has been no legislative amendment of the substance of the Acts, and the changes made in the present edition are due to the effect of decisions given by the Courts. As, however, these are numerous, and as many of them deal with matters of vital importance, the changes which it has been found necessary to make are extensive, and large parts of the book have been rewritten. In especial, recent decisions have made it possible to elucidate more fully the position of the statutory tenant and the provisions as to decontrol.

We have adhered to the general arrangement of former editions in which the statutes are given in annotated form, but are preceded by an introductory sketch, which it is hoped will enable the reader to obtain a general idea of the subject, to some extent serving as a supplementary index enabling him to refer to the fuller treatment of any particular topic later in the book. With a view to facilitating the task of turning up particular points we have endeavoured to make the general

index one of some fullness and have made a liberal use of cross-references throughout the book.

The earlier legislation on the subject which preceded the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is even now sometimes required for reference and is given in an Appendix. It is believed that all the reported decisions of the superior Courts to the end of 1928 are incorporated, but it has not been considered desirable to include the decisions of inferior Courts here or in Scotland. The present legislative position as to Ireland (*post*, p. 4) has made it necessary to submit Irish decisions even of the superior Courts to censorship if their inclusion was not to be misleading.

EDITORS OF "LAW NOTES"

January, 1929.

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INTRODUCTORY SKETCH OF THE ACTS.

(*The Section references are to the principal Act* (i.e., *the Increase of Rent and Mortgage Interest* (*Restrictions*) *Act*, 1920) *unless otherwise indicated.*)

The Rent and Mortgage Interest (Restrictions) Acts.

Although the existing body of legislation dealt with in this book consists of five statutes, for practical purposes the reader who consults it will find his task the easier if he envisages it as chiefly that of construing three statutes, viz., the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, known as the principal Act, as amended (on an isolated point) by the Rent Restrictions (Notices of Increase) Act, 1923, and (more generally) by the Rent and Mortgage Interest Restrictions Act, 1923. The Prevention of Eviction Act, 1924, merely introduces a modification into sect. 5 of the principal Act, as already previously modified by the Rent and Mortgage Interest Restrictions Act, 1923 (these modifications being incorporated in the text of the principal Act as printed in this book). The Rent and Mortgage Interest Restrictions (Continuance) Act, 1925, merely prolonged the operation of the statutes already mentioned, which have been further continued in operation by the Expiring Laws Continuance Acts, 1927 and 1928.

The practitioner called upon to advise as to Rent Act points is likely to find his concern lies with either the principal Act or the Rent and Mortgage Interest Restrictions Act, 1923. The most vital sections are, of the principal Act, sects. 1, 2, 3 and 4 (which restrict increases of rent and mortgage interest), sect. 5 (which protects the tenant from ejectment), sect. 7

(which protects mortgagors), sect. 12 (which is the definition section, and, *inter alia,* specifies what tenancies (sub-sect. (2)) and what mortgages (sub-sect. (4)) fall within the Acts, while sub-sect. (3) contains the apportionment provisions of the Act), sect. 14 (recovery of overpayments, &c.), sect. 15 (defining the position of the statutory tenant), and sect. 17 (which deals with jurisdiction, and is especially worth the practitioner's notice, having regard to its possible effect on costs); of the Rent and Mortgage Interest Restrictions Act, 1923, the sections of chief importance are sect. 2 (the decontrol provisions), sect. 6 (power to amend notices of increase of rent), and sect. 8 (which imposes a time limit for the recovery of payments made recoverable by the Acts).

The statutes dealt with in these pages, as matters stand, expire in respect of their existing provisions on December 25th, 1929 (in Scotland, May 28th, 1930), but Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, contains certain other provisions which are to operate for five years from the expiration of the general provisions of the Act. The steps by which the legislative position above indicated has been arrived at are a little complicated, and it may therefore be useful if we proceed to a detailed statement.

Origin and History of the Acts.

The circumstances which have led to this legislation are too well known to require discussion. The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by subsequent Acts, constituted an attempt to deal with the problems involved, and these earlier Acts were repealed and replaced by the Act of 1920, which had a much wider scope, dealt with many properties not included in the parent provisions, and introduced innovations of a radical nature. Reference to these earlier Acts will rarely be required, but since it may be necessary in special cases, these Acts are given in Appendix I. Decisions on them will frequently be of assistance in interpreting the existing Acts, but must be applied with caution.

The principal Act, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, was passed on July 2nd,

1920, and was originally only in force until the 24th June, 1923, except as regards business premises, the provisions as to which expired on the 24th June, 1921. The operation of the principal Act (except sect. 13) was extended to 31st July, 1923, by the Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, coming into operation on the 17th May, 1923. The Rent Restrictions (Notices of Increase) Act, 1923, made an amendment in respect of an isolated point, and the Rent and Mortgage Interest Restrictions Act, 1923, prolonged the duration of the principal Act till June 24th, 1925, introduced a considerable number of alterations as to various matters, and in Part II. thereof made special provisions of its own to take effect on the lapsing of the principal Act as amended, and to remain in force (unless in certain specified conditions they expired earlier) till June 24th, 1930. The Prevention of Eviction Act, 1924, still further amended the principal Act. The Rent and Mortgage Interest Restrictions (Continuance) Act, 1925, prolonged the operation of the principal Act as amended till 25th December, 1927, and as to Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, above mentioned, substituted for the date June 24th, 1930, the date of "five years after the expiration of the principal Act." The Expiring Laws Continuance Act, 1927, coming into operation on December 22nd, 1927, and the Expiring Laws Continuance Act, 1928, coming into operation on December 19th, 1928, still further prolonged the operation of the Acts till 25th December, 1928 and 1929 respectively. As regards the operation of the Acts in Scotland there is a variation in the above dates. (See *post*, pp. 120, 147.)

Policy and Duration of the Acts.

The general policy of the Acts is to confer security of tenure on the tenants of premises below specified limits of value. Tenants are absolutely protected against increase of rent beyond certain permitted limits. Throughout it is important to bear in mind that the Acts are restriction Acts—their policy is to fetter the powers that the lessor would otherwise have as to increasing rent and other matters without themselves con-

ferring any powers on him. Thus the Acts give no power to the landlord to transfer any liability to the tenant as to rates or repairs (*post*, p. 30), nor in strictness do they confer any power on him to raise rent. The remarks as to this, *post*, p. 12, should be carefully noted. The Acts confer no power of ejectment. The tenant cannot ever be ejected unless power exists independently of the Acts, and then (1) only within a specified range of circumstances, and (2) subject to the Court thinking it reasonable to grant ejectment. Thus if the tenant fails to pay any rent at all the landlord is not necessarily entitled to eject or to distrain (distress in the case of tenancies where the Act is applicable being made impossible unless by leave of the County Court).

As to mortgages falling within the Act, just as a landlord is prevented from indefinite increase of his tenant's burdens, so is a mortgagee prevented from increasing the rate of interest beyond specified limits and from enforcing his security save under specified conditions.

This will be the position till December 25th, 1929 (in Scotland May 28th, 1930). For five years after these dates the tenant and mortgagor will, however, enjoy the modified protection afforded by Part II. of the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, pp. 136—140), unless, in virtue of a resolution of both Houses, those provisions expire at an earlier date.

Properties within the Acts.

The Acts extend to England and Scotland. Only the principal Act applies to Ireland, while the Irish Free State has now its own Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 (No. 19 of 1923), and Northern Ireland its Rent and Mortgage Interest (Restrictions) Act, Northern Ireland, 1925.

The Acts apply to the houses specified in sect. 12 (2). Roughly they apply to a house or part of a house let as a separate dwelling where either the standard rent (usually that of August 3rd, 1914) (see post, p. 65) or the rateable value does not exceed 105*l.* for London, 90*l.* for Scotch, and 78*l.* for other houses.

The criterion, it should be noted, is a double one—if either rent or rateable value do not exceed these figures the Acts apply.

For purposes of the Acts "house" may include a flat or even a single room if let as a dwelling. In this connection the apportionment provisions (*post*, p. 77) of the Act will frequently have to be considered. The Acts no longer apply to business premises as such, sect. 13 of the principal Act now having lapsed. It must, however, be remembered in construing the Acts that premises may fall within the provisions as to "dwelling-houses," though part thereof is used for business purposes (sect. 12 (2), *post*, p. 74). A shop used by the tenant also as a residence, *e.g.*, will usually be within the Act

But there are the following exceptions and qualifications:—

(a) The Acts do not apply to houses *bonâ fide* let at a rent which includes payments in respect of board, attendance, or use of furniture, provided that the proportion of the rent fairly attributable to the attendance or use of furniture is a substantial part of the whole rent. This proviso is in virtue of the amending Rent and Mortgage Interest Restrictions Act, 1923, s. 10, under which the inclusion of a little linoleum in the letting can no longer oust the Acts. But while the general provisions of the Acts do not apply, there are certain special provisions as to furnished lets (*post*, pp. 62, 63; and see also *Prout* v. *Hunter*, referred to in case (g) below).

(b) The Acts do not apply to houses where land is included in the letting the rateable value of which is not less than one-quarter that of the house or premises (*post*, p. 71).

(c) Where the rent is less than two-thirds the rateable value the Acts will not apply till there is a letting at a higher rent (*post*, p. 84).

(d) The Acts do not apply to new houses or premises erected after or in course of erection on April 2nd, 1919 (sect. 12 (9), *post*, p. 85).

(e) Or, with a similar limitation as to date, to converted flats (sect. 12 (9), *post*, p. 85).

(f) Houses decontrolled in virtue of the express provisions in that behalf of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, cease to be within the Acts (see *infra*, next para., and *post*, pp. 120—128).

(g) Apart from the decontrol under the express enactment referred to, a change of circumstances may sometimes in itself suffice to take premises outside the scope of the Acts and effect a practical decontrol. It is true that sect. 12 (6) in terms appears to embody the principle that property once within the Acts is always within the Acts (*post*, p. 83). But this subsection has received a minimising interpretation and is subject to so many exceptions as to be largely inoperative. Express enactment, of course, prevents its application to cases (d), (e) and (f) just mentioned. But apart from this, a reconstruction outside sect. 12 (9) not falling within case (e) above, may yet be sufficient to make a house or flat a new one for the purpose of the Acts (*Phillips* v. *Barnett* and other cases cited *post*, p. 80). Moreover, it has been decided the premises may in some cases for this purpose have to be treated as "new," for reasons independent of any physical alteration. Thus, apart altogether from the decontrol provisions of sect. 2 of the Rent and Mortgage Interest Restrictions Act, 1923, the Acts will cease to apply to premises expressly let for business purposes, even though the premises have hitherto been let for residence (*Williams* v. *Perry*, *post*, p. 75). Somewhat similarly it has been decided that whether the premises are let furnished or not is to be tested by the position of the occupying tenant, and that a house let unfurnished is taken out of the Act by a furnished sublet. (*Prout* v. *Hunter*, *post*, p. 73; cp., however, pp. 93, 94.)

Decontrol.

Houses originally within the Acts may become decontrolled in virtue of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2. These cases will be found discussed, *post*, pp. 120—128. In some cases where a house has been decontrolled it may be recontrolled and brought again within the Acts (*post*, p. 55). See also the remarks under case (g) on the previous page.

Rent and Protection of Tenants.

A standard rent is taken, *i.e.*, the rent on August 3rd, 1914, or if the premises were not then let, the last rent they were let at before that date. As to premises never let till after August 3rd, 1914, then the rent at which they were first let. Where the rent is "progressive," the maximum rent is the standard rent (sect. 12, sub-sect. (1) (a) of the principal Act). In some cases the standard rent will have to be ascertained by a process of apportionment (see *post*, p. 77). For other special cases, see *post*, pp. 65, 66.

Subject to certain exceptions (and especially of course the decontrol provisions of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2), any increase of rent after March 25th, 1920, which exceeds the standard rent by more than the specified permitted limits, is unenforceable by the landlord. This will be so even though there has been a change of tenants—the landlord cannot unduly (even if he can at all: see *Schmit* v. *Christy*, *post*, p. 32) increase the rent even on letting to a new tenant. The standard rent is fixed for the house, not for the particular tenancy (*post*, p. 22).

Security to the tenant against any increase in cases where the Act applies is afforded by the following methods:—

(1) By express enactment (sect. 1) that the increase is irrecoverable by the landlord, and if paid by tenant may be recovered by him (sect. 14. See also sect. 19 (3)). This is now subject to a time limit: see the Rent and Mortgage Interest Restrictions Act, 1923, s. 8 (*post*, p. 133).

(2) Distress is forbidden except by leave of the Court (sect. 6).

(3) The tenant holding over is expressly confirmed in a statutory tenancy so that he cannot be ejected without legal proceedings (sect. 15, *post*, p. 90).

(4) By the provisions of sect. 5 of the principal Act—or rather that section in the form substituted for the original form by the Rent and Mortgage Interest Restrictions Act, 1923, and the Prevention of Eviction Act, 1924. Sect. 5 is the vital section protecting the tenant from ejectment, and will be found in its existing shape on p. 38 *et seq*. The result is that in *no* case is the Court bound to give judgment for possession against the tenant, and it cannot grant ejectment at all except on the grounds mentioned below, and even in these cases only if it considers it reasonable, *e.g.*, the Court *need* not grant ejectment against a tenant even if his rent is in arrear. It is impossible to contract out of the Act (*post*, p. 39), for these provisions deprive the Court of jurisdiction to order ejectment unless it is reasonable to do so and the case falls within one of the following heads:—

(a) The tenant is in default in payment of rent or fulfilment of the other obligations of his tenancy (*post*, p. 40).

(b) Nuisance or annoyance to adjoining occupiers by the tenant or person residing with him, or conviction of the tenant or person residing with him for immoral or for illegal use, or where the tenant or person residing with him commits waste, &c. (*post*, p. 41). It suffices that the nuisance, improper user, waste, &c. was on the part of a lodger or sub-tenant, unless the tenant has taken reasonable steps to get rid of the lodger or sub-tenant.

(c) The landlord has sold, relet, &c., after the tenant himself has given notice to quit (*post*, p. 42).

(d) The dwelling-house is reasonably required by the landlord as a residence (A) for himself or for his son or daughter over eighteen, or (B) for any person *bonâ fide* residing with the landlord or his or his tenant's whole time employee (actually or prospectively on housing accommodation being obtained) (*post*, p. 43). But in (B) alternative accommodation (*post*, p. 44) must be shown unless (1) the house was let to an employee as such and the employment has ceased (*post*, p. 49), or (2) the house is required in specified circumstances for agricultural labourers (*post*, p. 50), or (3) the landlord gave up occupation in consequence of military service (*post*, p. 51). In (A), *i.e.*, if the house is reasonably wanted by the landlord for himself or for a son or daughter over eighteen, alternative accommodation must be shown where the landlord became so by purchasing after May 5th, 1924, unless the case falls within heads (1) and (3) just given under (B). In cases where the landlord requires the house for his own occupation or that of a son or daughter over eighteen, but did not become landlord by purchasing after May 5th, 1924, alternative accommodation need not be shown if the Court is satisfied it would be greater hardship to refuse than to make the order, but even here though alternative accommodation is not absolutely essential, the Court is expressly required to take into account, in considering the question of greater hardship, whether alternative accommodation exists not only for the tenant but for the landlord. (Sect. 5 (1) (d) and concluding proviso (iv) of that sub-section introduced by the Prevention of Eviction Act, 1924, *post*, pp. 43, 51, 52, where also the meaning of "become the landlord" is discussed.)

(e) The premises are required for the purpose of a local or statutory authority or for a purpose of public interest and there is alternative accommodation (*post*, p. 46).

(f) The landlord became so after military service, requires the house for personal occupation, and offers the tenant sufficient accommodation in the same house (*post*, p. 47).

(g) The house is required for a former tenant who vacated it for military service (*post*, p. 47).

(h) The tenant has after July 31st, 1923, assigned or sublet the whole house without the landlord's consent—this whether there is a covenant against assigning or underletting or not (*post*, p. 48). The position is the same where, part of the house being already sublet, the tenant sublets the rest without consent.

(i) The house is licensed premises and the tenant has committed a licensing offence, or has been guilty of certain faults in the conduct of the business, or the licence has for any reason been refused (*post*, p. 48).

As much misconception has existed on the point, it may be well to mention that the receipt of rent from a statutory tenant will not prejudice the landlord's claim to possession, even where it is received in respect of a period exceeding three months from the expiration of notice to quit (see *post*, p. 97).

Alternative Accommodation.

Under sect. 5, as amended, alternative accommodation differs considerably from that required by the section in its original form (*post*, p. 44). The result of the Prevention of Eviction Act, 1924, is to make alternative accommodation a more frequent factor than it previously was.

The Statutory Tenancy.

A tenant who, after the tenancy has expired, remains in possession of the property in virtue of the above protective provisions is usually and conveniently described as a statutory tenant. His position is dealt with in sect. 15 and *post*, pp. 91—95. A statutory tenant cannot assign and can only sublet within certain limits (*post*, p. 92). As to whether notice by the landlord is needed to determine the tenancy, see *post*, p. 92.

Permitted Increases in Rent.

Subject to the conditions to be next mentioned, the landlord is not restricted to the standard rent, but under sect. 2 the rent may be increased in excess of the standard rent by the additions following:—

(1) A percentage on the landlord's expenditure on improvements or structural alterations as distinct from repairs. The rate is 6 per cent. on expenditure incurred before the 2nd July, 1920, and 8 per cent. on expenditure after (*post*, p. 24).

(2) An amount corresponding to the increase in rates in cases where the landlord pays these. As to the carrying of an increase in rates into the next rating period, and as to the result where rates after rising subsequently go down, see *post*, pp. 25, 26.

(3) A percentage on the "net rent" as defined by sect. 12 (1) (c) *post*, pp. 27, 67).

The method of calculating the last-mentioned percentage is a little complicated. First the landlord is given a sort of bonus of 15 per cent. (as regards houses within the previous Acts he only got the benefit of this to the extent of 5 per cent. for the first year from the passing of the principal Act, viz., 2nd July, 1920). Then in addition, to cover expenditure on repairs, the landlord gets a further percentage of 25 per cent. where the landlord does the repairs, or if the tenant has agreed to do part of the repairs, such lower percentage as may be determined by agreement or by the County Court.

This percentage therefore works out, where the landlord is solely responsible for repairs, at 40 per cent. on the net rent. If the house was already within the previous Acts, the rate was restricted to 30 per cent. till after a year from the 2nd July, 1920. Where the tenant is under express liability for part of the repairs, this must be taken into account in reduction of the percentage in manner pointed out by the Acts, so that it will be necessary before giving notice of increase in respect of repairs to settle the amount by agreement or reference to the County Court. (*Bourne* v. *Litton*,

post, p. 28.) It is important to note these percentages are not calculated on the actual rent paid by the tenant, or even on the standard rent, but on the "net rent" as defined (*post*, p. 67). It must be remembered also that the landlord is for the purpose of these calculations deemed to be liable for repairs for which the tenant is not under express liability (sect. 2 (5)). But the Act only provides that he is "deemed to be" so liable, it does not make him so liable in fact. Where the rent is below the standard rent, the Acts apparently confer no power to increase an existing rent up to the standard rent and then add the permitted increase. (*Dufty* v. *Palmer*, *post*, p. 24.)

A special power of increasing rent is given to railway companies by sect. 2 (1) (e) (*post*, p. 28).

In addition to these increases authorised by the principal Act, the Rent and Mortgage Interest Restrictions Act, 1923, authorises further increases in cases where *part* of the house is sublet. Thus if the tenant sublets a room he can exact a further 10 per cent. on the net rent of that room, though half of this amount can be added by his own superior landlord to his own rent (see *post*, p. 131). In certain circumstances an increase validly made will cease to operate (*post*, pp. 28, 129).

Conditions of Increase of Rent.

In this connection a vital point requires to be made clear at the outset. To talk of the landlord "raising the rent" (or the mortgagee "raising the interest") is to employ a convenient phrase. But it is a phrase that may mislead unless it is carefully understood that while the Acts restrict the possibility of an increase in rent or interest, they do not in terms give the landlord (or mortgagee) any power of increase he does not possess apart from the Acts, and only within narrow limits impliedly confer any power of increase. Now, apart from the Acts, a landlord could not during an existing tenancy increase the rent by simply giving notice to the tenant that the rent is increased. The tenant would not be liable unless he agreed to pay a higher rent, and if he did not assent to the increase, the landlord's notice raising the rent

would be legally quite ineffective. And even now under the Acts all that the landlord can do is to bring pressure to bear on the tenant by giving him proper notice to quit, and the effect of the Acts is to prevent even this from being effective pressure except to a modified extent. That is to say, if apart from the Acts the landlord would be in a position to turn out the tenant, the tenant will usually be able to resist ejectment in virtue of the protection which the Acts afford him. But if he elect to take advantage of the Acts and stay on thereunder, the tenant will be under a personal liability to pay not only the rent formerly paid by him, but also (subject to the fulfilment of certain conditions as to notice) the increases thereon permitted by the Act (*post*, p. 23). It is only in this sense that there is any power of increase conferred by the Acts, and in no case can there be any question of an increase until any existing tenancy has determined. This is a "basic rule" (per McCardie, J., *Glossop* v. *Ashley*, (1921) 2 K. B. 451), which, implicit in the earlier Acts, is now expressly recognised by sect. 3 (1) of the principal Act and judicially affirmed in *Kerr* v. *Bryde*, (1923) A. C. 16. To take a simple illustration: if the tenant have a lease expiring at Michaelmas, it is impossible to increase the rent till that date without the tenant's consent. Similarly, in the case of a weekly tenant, it is impossible for an increase to take effect till the tenancy has been terminated. It was the failure to realise this which led to the need for the Rent Restrictions (Notices of Increase) Act, 1923, making the statutory notice of increase in itself equivalent to notice to quit. See for a full account of this Act, the Introductory Note thereto, *post*, p. 109.

This, then, is the first of the two conditions which must be fulfilled before even the permitted increases are possible. No increase is possible in derogation of the tenant's rights under any existing tenancy (sect. 3 (1), see *post*, p. 23): any existing tenancy must have first determined. This may, of course, involve the giving of a notice to quit, but not necessarily so—no notice to quit is needed where the tenancy has expired and the tenant holds over as statutory tenant (*post*, p. 23). That the statutory notice of increase may

operate in itself as notice to quit has already been mentioned.

The second condition is that the statutory notice of increase has been given in accordance with the Act (sect. 3 (2), *post*, p. 33). This second condition need not be fulfilled (though the first one must be) as to the new increases authorised by the Rent and Mortgage Interest Restrictions Act, 1923, where the premises are partially sublet (*post*, p. 131), and once a valid statutory notice has been given it is unnecessary to repeat it—even on the occasion of a letting to a new tenant (*post*, p. 32). There is now power to the Court to amend defective notices (*ibid.* sub-sect. (1), *post*, p. 130).

Miscellaneous Provisions.

Certain methods of evasion are foreseen and guarded against. Thus, if the landlord flings any burden previously borne by himself on the tenant (*e.g.*, if the landlord without raising the amount of the rent requires the tenant to do repairs formerly done by the landlord), this counts as an increase of rent (sect. 2, sub-sect. (3)). The landlord cannot require payment of a fine, premium, &c. in cash or otherwise as a condition of granting or continuing a tenancy (sect. 8). To do so is a summary offence while the tenant will be able to get back anything paid in this way by suing for it or deducting from his rent (sect. 14, see also sect. 19, *post*, pp. 88, 105). It is open, however, to a lessor to take a fine or premium on granting a lease for fourteen years or more (sect. 8 (3)). Similar provisions prevent the tenant making a profit (except out of the landlord) on giving up possession (*post*, pp. 95, 134), the taking of such a profit being made a summary offence. But the tenant is not prevented by the Acts from taking a premium on assigning his tenancy (*post*, p. 96). See, however, note to sect. 15 (2). A demand that the tenant be required as a condition of his tenancy to buy furniture, &c. at an exorbitant price may amount to a demand of a fine or premium within the meaning of these provisions (Rent and Mortgage Interest Restrictions Act, 1923, s. 9, *post*, p. 134). A tenant can demand from the landlord a state-

ment as to the standard rent, and failure without reasonable excuse to furnish the statement is a summary offence, as are also certain entries in rent books and the like (*post*, pp. 63, 89).

Apportionment.

It has already been mentioned that a flat or single room may be a dwelling-house within the meaning of the Acts. In such cases the difficult provisions of sect. 12 (3), discussed in detail below (*post*, p. 78), will often apply. An important point to notice in connection with apportionment is that a process of apportionment may be required on the letting of a flat or a room in premises which do not themselves as a whole fall within the Acts (*Barrett and Evans* v. *Hardy Brothers, Ltd.*, *Alnwick, Ltd.*, and other cases cited therewith, *post*, p. 79).

Effect of the Acts as against Purchasers.

In general the purchaser is in the same position as the vendor from whom he buys, and the tenant is entitled to the same protection against a purchaser as against the original landlord. But this is subject to sect. 5 (1) (*ante*, p. 9), under which a purchaser may sometimes get possession where others could not. For further observations as to the rights of purchasers, see *post*, pp. 59, 64.

Sub-tenants, Lodgers and Service Occupation.

The Acts make clear that, subject to sect. 5 (1) (h), a sub-tenant is entitled to protection equally with the tenant (see *post*, pp. 54, 70). Persons having "service occupation" are not within the protection of the Acts (*post*, pp. 49, 70), nor are lodgers, as to whom see, however, *post*, p. 131.

Sub-lessors of part of the premises can be required to give details as to the sub-lease to the superior lessor (Rent and Mortgage Interest Restrictions Act, 1923, s. 7, *post*, p. 132).

Furnished Dwelling-houses.

The general provisions of the Acts have no application to the letting of furnished dwelling-houses, always remembering that for the purpose of excluding the letting from these general

provisions, the let will not be treated as a furnished let merely because the rent includes a sum for the use of furniture, if the amount attributable to the use of furniture is comparatively trivial (*ante*, p. 5, *post*, p. 134). But in the case of a letting which is genuinely a furnished let, although the general provisions of the Acts are inapplicable, there are certain special provisions made. Under these, where the rent in respect of a furnished dwelling-house shows more than 25 per cent. increase (not on the rent, but) on the "profits" as compared with the "normal profit" from a similar letting in the year ending August 3rd, 1914, the excess may be declared irrecoverable by the County Court (sect. 9, *post*, p. 62). Exorbitant charges for furnished letting are made a criminal offence (sect. 10, *post*, p. 63).

Mortgages.

Mortgages to which the Acts are applicable.—The mortgages to which the Acts apply are defined in sect. 12 (4). They are mortgages comprising one or more dwelling-houses falling within the Acts, whether the whole of the mortgaged property so falls or not, except that—

(1) Mortgages where other land is also included, if the rateable value of the dwelling-house is less than one-tenth the rateable value of the whole of the land comprised in the mortgage (sect. 12, sub-sect. (4)). Where the other land included is more than one-tenth of the rateable value of the entirety in mortgage a curious provision enables the mortgage money to be apportioned between the dwelling-house and that other land, so as to give rise to two separate mortgages, one within and one outside the Acts (sect. 12 (5), *post*, p. 83).

(2) Equitable charges by deposit of title-deeds or otherwise.

(3) Mortgages created after the 1st July, 1920.

(4) Mortgages of ground rents (sect. 12, sub-sect. (7)).

As to mortgagors in possession and as to the effect of decontrol on mortgages, see *post*, pp. 59, 60, 128.

Increasing Mortgage Interest.

The general observations made above (*ante*, p. 12) as to "raising rent" are to some extent, and *mutatis mutandis*, applicable also to raising the rate of mortgage interest.

While there is imposed a limit on any power to increase the mortgage rate of interest which the mortgagee would, apart from the Act, enjoy, the Act does not itself expressly confer on the mortgagee a power to increase the rate of interest. Whether the Act impliedly imposes any statutory obligation on the mortgagor to pay any increased rate, and, if so, in what circumstances, is a point of difficulty. The matter is discussed, *post*, p. 35 *et seq.*

The standard rate of interest.—The Acts fix a standard rate of interest, viz., the rate payable on August 3rd, 1914, or if the mortgage was created since that date the original rate of interest (sect. 12, sub-sect. (1) (b)), the mortgagee being prevented from raising the rate of interest above the standard rate, except within specified limits, and any agreement by the mortgagor to pay the higher rate being unenforceable (sects. 1 and 4). It is to be observed that a radical distinction exists between standard rent and standard interest. As already pointed out, the standard rent is fixed for the house, not simply for a particular tenancy—it will govern all future tenancies of the property. The standard rate of interest, on the other hand, is a standard for that particular mortgage and will not affect other mortgages of the same property.

Permitted increase of mortgage interest.—Mortgage interest can be increased by 1 per cent. in excess of the standard rate up to a limit of $6\frac{1}{2}$ per cent. As to houses within the repealed Acts the increase could not exceed $\frac{1}{2}$ per cent. till the 2nd July, 1921 (*post*, p. 35). Where overpayment of mortgage interest has been made it is recoverable subject to a time limit (*post*, pp. 88, 133).

Restriction on mortgagee's powers.—A mortgagee under a mortgage to which the Acts apply may not during the con-

tinuance of the Acts call in his mortgage or foreclose or sell or take other steps to enforce his security or to recover the principal, unless interest at the rate permitted by the Acts is twenty-one days in arrear or the mortgagor is breaking his covenants or letting the property get into disrepair or not making payments falling due under prior incumbrances (sect. 7). In this connection it should be noticed that where the mortgagor has lost the protection of the Act by allowing interest payments to be twenty-one days in arrear, he does not recover that protection by subsequent payment of those arrears (*Evans* v. *Horner*, *post*, p. 57).

But this restriction of a mortgagee's powers does not apply to mortgages repayable by instalments spread over not less than ten years. Nor does it prevent a mortgagee from exercising his power of sale when he was in possession on the 25th March, 1920, or where he does so with the mortgagor's consent, or where the mortgaged property is leasehold and the mortgagee satisfies the County Court that the security is seriously diminishing in value or otherwise in jeopardy and that it is reasonable to call it in.

And the provision of course does not apply to mortgages outside the Acts, *e.g.*, equitable charges by deposit or mortgages of ground rents or mortgages created after the 1st July, 1920 (sect. 12, sub-sects. (4) and (7)). The protection formerly afforded to mortgagors by the Courts (Emergency Powers) Acts ceased on August 31st, 1922.

For further discussion of the difficult questions connected with mortgages, see *post*, p. 35 *et seq.*

Provisions as to Rating.

By sect. 16 (1), the increase of rent permitted by the Acts was not to take a house outside the existing provisions as to compounding. The effect of the repeal of this sub-section by the Rating and Valuation Act, 1925, will be found discussed below, *post*, pp. 68, 69, 86, 96, 97. The Act also contains provisions as to the rating of newly-erected houses (sect. 12 (9), *post*, p. 86). See also on rating, *Poplar Union* v. *Roberts*, *post*, p. 25.

The Housing, Town Planning, etc. Acts.

For information as to these Acts (now mainly represented by the Housing Act, 1925), see *post*, pp. 31, 46, 47, 85, 86, 89, 90, 93.

Courts having Jurisdiction under the Acts.

The Acts apply to proceedings under the Small Tenements Recovery Act, 1838. As to some matters the County Court has exclusive jurisdiction, and is given a general power of determining various questions. (Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 2 (6); s. 12 (3); Rent and Mortgage Interest Restrictions Act, 1923, s. 11 (1), *post*, pp. 31, 135.) Apart from these cases where exclusive jurisdiction is expressly given to the County Court, sect. 17, as interpreted by the Courts, appears, in cases where the provisions of the Act are applicable, to confer on the County Court a general jurisdiction over actions with which otherwise only the High Court would be competent to deal. Indeed, the penal provisions as to costs contained in this section go far to oust the jurisdiction of the High Court in ejectment actions (and possibly in foreclosure proceedings), in respect of premises falling within the Acts. For a detailed discussion of these difficult and important questions, the reader is referred to the note to sect. 17 given below (*post*, p. 99). Power is given to make rules (*post*, pp. 98, 135, 140), and these rules are given in Appendix II.

Administration of Justice Act, 1920.

By sect. 3 (2) of this Act, "notwithstanding anything in any Act it shall not be lawful for any party in a County Court or other civil Court of inferior jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried with a jury.

See observations as to this, *post*, p. 100.

The Position after December 25th, 1929.

As mentioned above (*ante*, p. 2), the general operation of the Acts ceases on December 25th, 1929 (in Scotland May 28th, 1930). But, under Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, tenants and mortgagors will even then still get the benefit of certain discretionary powers given to the Court for their protection.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 Geo. 5, c. 17.

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith. [2nd July, 1920.]

Restrictions on Increase of Rent and Mortgage Interest.

1. *Restriction on increasing rent and mortgage interest.*—Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:

Increases of mortgage interest are dealt with in a note to sect. 4. As to "dwelling-house," "standard rent," "standard rate of interest," "tenant," "landlord," "mortgagor," "mortgagee," see sect. 12, *post*, and as to the right to recover overpaid rent or interest, see sect. 14, *post*.

This confers no power on the landlord to increase rent during an existing contractual tenancy. (See remarks, *ante*, p. 12; *post*, p. 23.)

This section avoids an agreement for excessive increase of rent or interest accruing due after March 25th, 1920. As regards houses which were within the previous Acts, the apparent effect of sect. 19 (3) is practically to substitute for March 25th, 1920, the date August 3rd, 1914, in respect of houses which fell within the Act of 1915, and 25th December, 1918, in respect of 1919 Act houses (see *post*, p. 105). Where the increase took place before 25th March, 1920, so that it is not hit by this section, its validity will depend on the earlier Acts. It is useful, therefore, to notice that even under these no increase was possible till any existing tenancy had determined (*Smith* v. *Lloyd*, (1923) W. N. 197).

The material date by which to judge whether the rent has been increased since March 25th, 1920, is the date when the increase comes into effect, *viz.*, the date when the new rent begins to run, not the first date when it becomes payable (*Raikes* v. *Ogle*, (1921) 1 K. B. 576), nor the date of the agreement to make the increase. (*Goldsmith* v. *Orr*, (1920) W. N. 250; see also note to sect. 4, *post*, p. 37.) Where by agreement dated March 12th, 1920, premises were let for a term of years "from March 25th, 1920," at a rent in excess of the standard rent, it was held the rent commenced to accrue on March 26th and had been increased since March 25th (*Raikes* v. *Ogle*, (1921) 1 K. B. 576). See also *Brakspeare & Sons, Ltd.* v. *Barton* ((1924) 2 K. B. 88) (a case of agreement for a lease to operate retrospectively). The onus of proving that increase was made after the critical date is on the tenant (*Booth* v. *Mace*, "Estates Gazette," June 14th, 1924).

The clause applies to new tenants as to old; the landlord cannot raise the rent beyond the permitted limits (and see *post*, pp. 23, 24, 32, 33) even on re-letting. The standard rent is fixed for the house, not the particular tenant (*King* v. *York*, (1919) W. N. 59). This is, however, now subject to the decontrol provisions contained in the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *post*, p. 120.

The rent of which increase is forbidden is a money rent. Where premises are let, the tenant agreeing to allow the lessor the use of a couple of rooms, the money value of this licence to the lessor cannot be included as rent for the purpose of ascertaining whether the rent exceeds permitted limits (*Hornsby* v. *Maynard*, (1925) 1 K. B. 514).

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

"Passing of this Act," *i.e.*, 2nd July, 1920. Since the landlord is liable to refund anyhow (sect. 14), the object of this proviso is not clear. Possibly it was framed to meet the case of an increase beyond the permitted limits before the property fell within the Act, followed by a further increase after the Act applied, when it is arguable on the wording of the earlier part of this section that this further attempted increase might reduce the rent actually payable to the permitted limit: if so, this proviso might be useful.

2. *Permitted increases in rent.*—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say:—

In dealing with this provision and, indeed, with the Act generally, it must be remembered that the statutory notice of increase will not prejudice the contractual rights of a tenant or make him liable for an increase during the period of any existing tenancy: the increase cannot take effect till any such tenancy determines. (See remarks, *ante*, p. 12.) This is a "basic principle" (*Glossop* v. *Ashley*, (1921) 2 K. B. at p. 456). It applies to continuing tenancies (*e.g.*, weekly ones) equally with others (*Kerr* v. *Bryde*, (1923) A. C. 16, affirming *Newell* v. *Crayford Cottage Society*, (1922) 1 K. B. 656, see *post*, p. 109). But the Rent Restrictions (Notices of Increase) Act, 1923, makes the statutory notice of increase in itself equivalent to a notice to quit (*post*, p. 110), and in any case where an existing tenancy has once been determined there is no need for further notice to quit on any further increase of rent as against a statutory tenant. (*Shuter* v. *Hersh*, (1922) 1 K. B. 438; *Felce* v. *Hill*, (1923) W. N. 235.) See also *Creamer* v. *Mitchell* ("Estates Gazette," 21st April, 1923).

An express agreement by the tenant to an increase within the specified limits is valid (subject to the requirements of sect. 3, *infra*, as to notice, &c.), and (subject to the same conditions) the mere fact that the tenant holds over will make him personally liable during the holding over for the increase, though whether in virtue of implied contract or of a statutory liability imposed by the Act, is not clear. The matter is discussed in *Glossop* v. *Ashley* ((1921) 2 K. B. 451 (McCardie, J.), and (1922) 1 K. B. 1, C.A.), and cp. *Cork Improved Dwellings Co.* v. *Barry* ((1919) 2 Ir. R. 244)—a case on the earlier Acts. *Hill* v. *Hasler* ((1921) 3 K. B. 643) favours implied contract. Where premises have been let at a rent below the standard rent, an increase cannot be effected by the statutory notice, so as to make the tenant liable not only for the permitted increases, but for the further sum necessary to bring his rent up to

the standard rent (*Dufty* v. *Palmer*, (1924) 2 K. B. 35). See, however, what was said in *Glossop* v. *Ashley* ((1921) 2 K. B. at p. 458, and (1922) 1 K. B. at p. 7 (where "schedule" should apparently read "section"), and pp. 9 and 11. See also remarks in *Brakspeare* v. *Barton* ((1924) 2 K. B. 88). Assuming *Dufty* v. *Palmer* is right (which is perhaps doubtful), it would seem that the lower rent could not be increased so as to bring it up to the standard rent even by express agreement.

For the notice which must precede increase of rent, see sect. 3; and for the additional increases possible where the premises are partially sub-let, see *post*, p. 130.

(a) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended:

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

Having regard to sect. 15 (1), improvements as a rule will only be possible by the tenant's consent.

It will be observed that no increase is possible under this clause in respect of ordinary repairs. For the notice which must precede any increase, see sect. 3, *infra*, p. 33.

Whether street improvements would come within this clause is not clear. If the owner of a house fails to pave and channel the street fronting after notice, and the local authority thereupon does so and apportions the expense on the frontagers in the usual way, whether he has incurred expenditure within the clause is doubtful, but we incline to the negative view. So, too, putting the drains in order or putting in new cisterns for old or new waterclosets for old would not appear to be a ground for increasing the rent, but to come under the head of "repairs." The Ministry of Health in reply to a local authority said they were disposed to the view that conversion of a conservancy closet system into the water carriage system would be an "improvement" within this provi-

sion. (Departmental Decisions, "Local Government Journal," 24th July, 1926.) In this context, cp. sub-sect. (2), *infra*, p. 28, and definition of repairs, sub-sect. (5), *infra*, p. 30.

(b) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter:

See further as to increases for rates the note to sect. 3 (2), *infra*, pp. 33, 34, and for definition of "rates," see sect. 12 (1) (d), *infra*.

There can be added only the increase in the rates actually payable after taking into account the commission allowed by the overseers to the landlord under the provisions (*post*, p. 97) as to compounding (*Nicholson* v. *Jackson*, (1921) W. N. 251; cp. *Hodgkinson* v. *Hewitt* (1927), 44 T. L. R. 694 (a decision on the Sheffield Corporation Act, 1920)).

An increase can be added even where it is caused by a rise in the rateable value of the premises, and not in the rate itself (*Steel* v. *Mahoney*, (1918) W. N. 253; 34 T. L. R. 327); but the effect of the Act is not to be taken into account for rating purposes under the Valuation (Metropolis) Act, 1869, and the rateable value is not limited by the standard rent plus the highest increase permitted by the Act (*Poplar Union Assessment Committee* v. *Roberts*, (1922) 2 A. C. 93). Cp. also in this connexion, *Stirk & Sons, Ltd.* v. *Halifax Assessment Committee* ((1922) 1 K. B. 264). The principle of *Poplar Union Assessment Committee* v. *Roberts* appears to apply also to the method of rating directed by the Rating and Valuation Act, 1925.

In *W. H. Sutton & Sons* v. *Hollerton*, (1918) W. N. 237, a house in Manchester, where rates were payable for the yearly period June 25 to June 24, was before the war let at 8*s*. 9*d*. a week. On January 5, 1918, the landlord served a notice informing the tenant that his rent would be 9*s*. 9*d*. as from February 2, 1918, owing to an increase in rates. From the particulars served with the notice, it appeared that for the year 1915—1916 the rates showed

an increase of 12*s.* 2*d.* over 1914—1915; for the year 1916—1917 the increase, again as compared with 1914—1915, was only 2*s.* 9*d.*, and, similarly, for 1917—1918 only 6*s.* 9*d.* The landlord added together the total increase for the three years, making 1*l.* 1*s.* 8*d.*, and divided that amount by 21 (the number of weeks from February 2, 1918, to June 29, 1918), which brought out the sum of 1*s.*, which he sought to add to the weekly rent. It was held (on the similar wording of the Act of 1919) that an increase in the rent could only be made in respect of the increase in the rates on the current rating period. In this case the current rating period was the year ending June 24, 1918, the increase in the rates as compared with the 1914—1915 period was 6*s.* 9*d.*, and that must be divided by the number of weeks in the period, viz. 52. The divisor will be the number of weeks in the rating period even though notice of increase is not given to the tenant till that period has already begun (*Cardiff Corporation* v. *Isaacs*, (1921) W. N. 165). (See Article in "Law Notes," 1921, p. 74.)

It was held in *Cork Improved Dwellings Co.* v. *Barry*, (1919) 2 Ir. R. 244, that no increase was possible in respect of rates payable under local Acts incorporating the Towns Improvement Clauses Act, 1847, but on the ground that these are not chargeable on the occupier as the language of the former Act required. The present Act contains no similar words and the decision, therefore, is not to be treated as conclusive of the existing law. Water rates are expressly included (see sect. 12 (1) (d), *post*, p. 68).

Where rates having gone up an increase of rent has been made and thereafter there is a reduction in the rates, the case is, in Scotland, dealt with by the House Letting and Rating (Scotland) Act, 1920, s. 1. As to England, there is no express provision on the point, but it was held by the Court of Appeal, in *Strickland* v. *Palmer* ((1924) 2 K. B. 572), that there must be a proportionate abatement of the increase. The abatement in rent will not, however, take place contemporaneously with the decrease in the rates, for under sect. 12 (1) (d) of the Act (*post*, p. 68), the landlord is deemed to be paying rates at the original rate till the next rate is demanded, and it will apparently be from this date that the abatement of the increased rent must take place. The suggestion that a fresh notice of increase is needed when any fresh rate is made, even though not at an increased figure, is apparently unfounded.

It may be mentioned that where a landlord is in arrear with his rates, sect. 15 of the Rating and Valuation Act, 1925 (which came into operation on April 1st, 1927), authorises the rating authority to collect rent due from the tenant in satisfaction of the arrears of rates. This does not appear to affect the liability to pay increases of rent (even in respect of rates) under the present statute.

An additional increase of rent is authorised by the Landlord and Tenant Act, 1927, s. 16, in respect of tenancies falling within Part I. of that Act (*i.e.*, tenancies, other than mining leases or of agricultural holdings) where the premises are used wholly or mainly for carrying on any trade or business, excluding for this purpose premises used for professional purposes (*ibid.* s. 17). In such cases the landlord is given a right to recover as rent (a) any increase in rates and taxes due to an increase of assessment caused by improvements done by the tenant under the Act, and (b) increases in fire insurance similarly caused, anything to the contrary in the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, notwithstanding. These Acts, however, will comparatively rarely apply to a tenancy within the Landlord and Tenant Act, 1927, though they may be applicable, *e.g.*, to a dwelling-house comprising also a shop. There appears to be no need to give notice in order to obtain the increases authorised by the Landlord and Tenant Act, 1927. It seems doubtful whether such an increase could be imposed on a statutory tenant.

(c) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent:

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:

(d) In further addition to any such amounts as aforesaid—

(i) Where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability:

For a summary of the effect of these two last increases, see *ante*, p. 11.

For net rent, see sect. 12 (1) (c). Repairs are defined in subsect. (5) of this section, which also provides that the lessor is to be treated as responsible for repairs in the absence of agreement. Where the lessor is not solely responsible, no notice of increase

under this head is possible till the amount has been determined by agreement (prior to the notice) or by the County Court (*Bourne* v. *Litton* ((1924) 2 K. B. 10). But it was suggested by Scrutton, L.J., in this case that possibly sects. 6 and 11 of the Rent and Mortgage Interest Restrictions Act, 1923, may in future enable this difficulty to be overcome.

Under Schedule I. of the Income Tax Act, 1918, the landlord is assessable on the basis of being entitled to the full 40 per cent. increase under both clauses (c) and (d); he cannot claim that the increase under (d) is not rent, but a mere indemnity against liability to repair (*Biddle* v. *Morris*, (1924) 2 K. B. 490).

(e) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

Many railway employees occupy at a nominal cost houses provided by the railway companies. The agreement referred to provides that these men shall in future pay rent so as to equalise their remuneration with those who are not so housed. This sub-section enables the companies to alter the terms of such tenancies so as to carry out the agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (d) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (c) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further

satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

It will be noticed that this only applies to certain increases, not to increases in respect of improvements or rates. The High Court has no jurisdiction under this sub-section (*X Rays, Ltd.* v. *Armitage*, (1922) W. N. 27), nor does any appeal lie from the decision of the County Court (*Glasgow Corporation* v. *Mickel*, (1922) S. C. 228) even where the application is made by the sanitary authority as to repair (*ibid.*). See the Rent and Mortgage Interest Restrictions Act, 1923, s. 18 (5), *post*, p. 141. Compare, also, sect. 5 of that Act and sect. 3 of the Rent Restrictions (Notices of Increase) Act, 1923, *post*, pp. 116, 129. As to repairs, cp. sub-sect. (5) of this section, *infra*, p. 30.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

Thus if a house is let at 34*l.* per annum, lessor undertaking repairs, and a fresh agreement is made whereby the tenant under-

takes repairs at the same rent, if the repairs are equivalent to 10*l.* per annum, the rent is deemed to be increased by that amount. The application, however, of the provisions of sect. 3 (2) of this Act as to notice is, in this connection, not clear—the statutory form of notice is not well adapted to apply to a transfer of liability. In *Ebner* v. *Lascelles* ((1928) 2 K. B. 486) on a fresh lease at an increased rent the original repairing covenant was repeated with the omission of a fair wear and tear clause, no notice of increase having ever been given. The tenant was allowed to recover rent paid in excess of the standard rent, and it was held that there was a transfer of liability to the tenant who was only liable on the repairing covenant as originally worded. As to the effect of a "fair wear and tear" clause in modifying liability, see *Haskell* v. *Marlow*, (1928) 2 K. B. 45.

In an unreported case of *Highfield* v. *Griffin* (December 5th, 1921), a Divisional Court held that this sub-section was applicable where the incidence of rates was transferred to the tenant by the Sheffield Corporation Act, 1920. In *Brakspeare* v. *Barton* ((1924) 2 K. B. 88), the discontinuance of a discount on the price of liquors supplied to the tenant of a tied house was held not a transfer of liability. Where premises were let to a tenant who undertook to allow the lessor "the use of two rooms for his own occupation rent free," it was held that the licence to use the two rooms was not a liability transferred within the meaning of this section (*Hornsby* v. *Maynard*, (1925) 1 K. B. 514).

Experience has shown the need for a warning that the Act gives no power to the landlord to transfer liabilities to the tenant without his consent.

(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

See further as to the certificate, Rent and Mortgage Interest Restrictions Act, 1923, s. 18 (*post*, p. 140).

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

See *ante*, p. 11. As to the meaning of good and tenantable repair, see *post*, p. 141.

In previous editions the view was expressed that while the lessor is deemed to be liable to repair for the purposes of this section, there is no positive duty to repair cast on him by this provision. This view was, in *Morgan* v. *Liverpool Corporation* ((1927) 2 K. B. 131), accepted by Hanworth, M.R., and Atkin, L.J.; Lawrence, L.J., taking the opposite view.

But in any case a statutory obligation is (agreement to the contrary notwithstanding) cast upon the landlord by the Housing Act, 1925, s. 1, in respect of lettings within that section, to keep the dwelling-house (including part of a dwelling-house) during the tenancy "in all respects reasonably fit for human habitation." Where, however, the tenant in a contract of letting to which the Housing Act, 1925, s. 1, applies, himself covenants "to keep and leave the said premises in good and tenantable repair, state, and condition (fair wear and tear only excepted)," the tenant's covenant, though cut down in operation, is not so emptied of all effect that the landlord can be deemed solely "responsible" under the present subsection. Consequently, a notice of increase claiming an increase under sect. 2 (1) (d), *ante*, on the basis that the landlord is responsible for the whole of the repairs, is a bad notice (*Jones* v. *Geen*, (1925) 1 K. B. 659; cp. the observations in *Morgan* v. *Liverpool Corporation*, *ubi sup.*). In such a case a valid notice can only be given in accordance with *Bourne* v. *Litton*, *ante*, p. 28.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

"Landlord."—In this sub-section landlord is in relation to a sub-tenancy to include the superior landlord as well as the sub-lessor (Rent and Mortgage Interest Restrictions Act, 1923, s. 7 (3)).

"Final and conclusive."—See *post*, p. 78, and *Glasgow Corporation* v. *Mickel*, *ante*, p. 29. This sub-section gives the Court no power to amend a defective notice (*Penfold and Thompson* v. *Newman*, (1922) 1 K. B. 645) or to fix the standard rent in the abstract, apart from decision on other points (*Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311), (but see *R.* v. *Judge of Marylebone County Court* ((1923) 1 K. B. 365, *post*, p. 78)), though power now exists as to both matters under the Rent and Mortgage Interest Restrictions Act, 1923, ss. 6 (1), 11 (1), *post*, pp. 130, 135. It was held in *Dun Laoghaire Urban Council* v. *Moran*, (1921) 2 Ir. R. 404 (approved in *Brakspeare & Sons, Ltd.* v. *Barton*, (1924) 2 K. B. 88), that where a

question arises under this sub-section as to the amount due, no order for possession can be made till it is determined by the County Court. The sub-section only applies where application is made under it by either party for the decision of questions of administration by the County Court judge as arbitrator: it does not bar an appeal in a County Court action commenced under the general jurisdiction of the County Court, *e.g.*, an action claiming arrears of rent, even though this Act be relied on in defence (*Strickland* v. *Palmer*, (1924) 2 K. B. 572). But there is no appeal from an adjudication under this section that the landlord is wholly liable for repairs, and the appeal is barred even though questions of fact and of the construction of the lease were involved in the adjudication (*Elvington Tenants, Ltd.* v. *Hatton*, (1928) W. N. 102).

3. *Limitation as to permitted increases in rent or interest.*—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

This definitely establishes the "basic principle" referred to on p. 13, *ante*. The Act is a "restriction" Act—except to the extent mentioned in the note to sect. 2, *ante*, p. 23, it gives no power to increase rent, but limits any powers of the sort that would independently exist. A further discussion of this sub-section, and decisions thereon, will be found in the opening paragraphs of the note to sect. 2 (*ante*, p. 23) and in the introductory note to the Rent Restrictions (Notices of Increase) Act, 1923, *post*, p. 109.

It would seem from the case of *Schmit* v. *Christy*, (1922) 2 K. B. 60, that when there is a fresh letting of the premises this prevents any increase of rent even within the permitted limits. But this seems open to question, and it was apparently assumed in *Ebner* v. *Lascelles* ((1928) 2 K. B. 486) that such an increase is possible (for a criticism of *Schmidt* v. *Christy*, see 41 "Law Notes," p. 319) and in any case it would not apply to a lease within the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), *post*, p. 121, and if rent had already been increased by valid notice to a former tenant the increase may be continued to a new tenant. (See the conclusion of sub-sect. (2) of this section.)

The meaning of "the security could be enforced" is obscure, and is discussed with other points as to increase of mortgage interest in a note to sect. 4, *post*, p. 34.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

Notice is required even if the rent was increased before the Act (*Michael* v. *Phillips*, (1924) 1 K. B. 16; *Wortley* v. *Mann*, (1916) W. N. 390; *Bridges* v. *Chambers*, (1919) W. N. 34). (See also sub-sect. (3), *infra*.) Notice is necessary even on the occurrence of a new letting (unless notice of increase has already been given to a former tenant—see the concluding words of the sub-section) (*Schmit* v. *Christy*, (1922) 2 K. B. 60; *Bridges* v. *Chambers*, (1919) W. N. 34; *Michael* v. *Phillips*, *ubi sup.*). No notice under this sub-section is needed for the increases authorised by the Rent and Mortgage Interest Restrictions Act, 1923, s. 7. It was required by the Rent and Mortgage Interest (Restrictions) Act, 1919, s. 2, while that still operated (*Azulay* v. *Matthews*, 157 L. T. 366).

The notice, though it cannot operate till after, may be given before the expiration of an existing tenancy, *e.g.*, with (but probably not before) the notice to quit (*Hill* v. *Hasler*, (1921) 3 K. B. 643. Cp. *Peizer* v. *Federman*, (1921) W. N. 320); and notice is not bad because it is to take effect after a longer period than a week or a month from its date (*Hill* v. *Hasler*, *ubi sup.*). The sufficiency of evidence as to service was discussed in *Guthrie* v. *Steward* (1926), Sc. L. T. R. 475.

Formal defects in notice of increase were, under the old Acts, held not fatal (*Steel* v. *Mahoney* (1918), 34 T. L. R. 328). But

those Acts contained no statutory form of notice, and while trivial departure from the statutory form is probably not fatal, departure on a matter of substance invalidates the notice (*Peizer* v. *Federman*, (1921) W. N. 320; *Sammon* v. *Byrne*, (1926) I. R. 441). See also observations in *Penfold and Thompson* v. *Newman* ((1922) 1 K. B. 645) and *Marshall* v. *Clydebank Investment Co., Ltd.* ((1927) S. C. 860). It is fatal if the notice is in error as to the date from which the increase commences (*Peizer* v. *Federman*, *ubi sup.*), or as to the amount of the increase under sect. 2 (1) (c) (*Penfold and Thompson* v. *Newman*, (1922) 1 K. B. 645), or as to the standard rent (*Diprose* v. *Halford*, "Estates Gazette," November 11th, 1922). But probably error as to the increase under sect. 2 (1) (a) and (b) would not be fatal (see *Penfold and Thompson* v. *Newman*, *ubi sup.* at p. 652), and it has been held in Ireland not fatal as to clause (a) and (d) (*Elliott* v. *Ellis*, (1923) 2 Ir. R. 45). But *Elliott* v. *Ellis* was said by Greer, J., in *Bourne* v. *Litton* ((1924) 1 K. B. 231, affirmed C. A., (1924) 2 K. B. 10), to be wrongly decided. In *Bourne* v. *Litton* it was held that the notice was invalidated by including an increase under sect. 2 (1) (d) for repairs where the landlord was not solely liable, and no determination of the amount of the increase had yet been made (*ante*, p. 28). Notice increasing rent from September 27th was held not invalidated because in error it gave three months from December 27th within which to apply to the County Court for suspension of the increase (*Goldsmith* v. *Arlidge*, "Estates Gazette," February 16th, 1924). Defects in the notice have not their former importance in view of the County Court's power of amendment under the Rent and Mortgage Interest Restrictions Act, 1923, s. 6, *post*, p. 130; while in any case a fresh corrective notice is possible (*M'Kellar* v. *M'Master* (1926), Sc. L. T. Rep. 507).

Questions have been raised in the inferior Courts in Scotland whether the notice can be signed by an agent. It is thought that there is no objection to this (cp. *Jones* v. *Phipps* (1868), 3 Q. B. 567), but as the notice purports to be "by the landlord," it is perhaps safer for him to sign in person. At any rate, it is desirable that his name (and address) should appear even if the signature is by an agent.

The words, "or in respect of any period prior to," prevent the landlord from claiming the increase as from the date of the notice; the lessor is not only debarred from suing during the four weeks (or one week), but even when the notice is up cannot claim arrears of increase, so to speak, in respect of the period of notice. The increase cannot for any purpose be treated as starting till the period is up. Under the original Acts four weeks' notice was required for an increase in respect of rates as well as improvements, so that a landlord was prevented from recovering the increase in the rate in respect of the four weeks from the service

of the notice (cp. *W. H. Sutton & Sons* v. *Hollerton*, *ante*, p. 25). This grievance was aggravated when the rate was not made until some weeks after the beginning of the ratal period (so that the landlord not knowing of an increase in rates could not meantime give notice). If not made for, *e.g.*, six weeks thereafter, the landlord would be unable to recover the increase in respect of the first ten weeks of the period. The Act to some extent remedies this by cutting down the notice required in respect of rates to one week, and by sect. 12 (1) (d), which effects a notional carry over of the existing rate into the next rating period until the new rate is demanded. Hence, a landlord giving notice of increase after the expiration of a rating period, but before the new rate has been made, will be justified in basing his notice of increase on the figures of the last rate made. (Though if the next rate is at a lower rate than the previous one, as from the date when the new rate is demanded there will be an abatement of the increase made (*Strickland* v. *Palmer*, *ante*, p. 26).) Cp. (as to Scotland) the House Letting and Rating (Scotland) Act, 1920, which is still operative (Rent and Mortgage Interest Restrictions Act, 1923, s. 19).

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

4. *Permitted increase in rate of mortgage interest.*—The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum:

Provided that—

(a) the rate shall not be increased so as to exceed six and a half per cent. per annum; and

(b) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

The application of the Act to the increase of mortgage interest is a matter of much difficulty. One possible view on the language

of the Act is that, without the mortgagor's assent, the rate of interest cannot be increased at all. The Act, it may be urged, is not an "increase of mortgage interest" Act, but an "increase of mortgage interest *restriction*" Act. Apart from the Act, the mortgagee could not of his own initiative and without the mortgagor's consent increase the rate of interest, and it may be said the Act gives no power of increase—it only prevents increases from being effective which would otherwise be so, making an increase beyond the permitted limits ineffective even though agreed to. On the whole, however, it appears the better view that no consent by the mortgagor is necessary to make the increase effective. This view makes the position of increase of mortgage interest analogous to that of increase of rent, for, as we have already seen, the statutory tenant becomes liable to increased rent under a statutory liability imposed *in invitum* by reason merely of his holding over as statutory tenant (*ante*, p. 23). The analogy, however, is by no means complete. There is no provision in respect of mortgage interest in the Act corresponding to the express provision as to notice of increase of rent contained in sect. 3 (2), and while, presumably, no increase of mortgage interest can be claimed till notice of increase has been given to the mortgagor, this is matter of inference and not of express enactment.

Assuming, then, that mortgage interest can be increased without the mortgagor's consent, which is the view, we think, the Court would struggle to accept, there still remain difficult questions hanging by sects. 7 and 3. Can the mortgagee give notice of increase taking effect at once, or must the notice, at any rate in the usual case (*i.e.*, where there is no breach of covenant or failure to repair by the mortgagor), await before it takes full effect the expiration of due notice calling in the mortgage?

By sect. 7 it is made unlawful for the mortgagee in cases where the Act applies to call in his mortgage or take any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security, unless (1) interest at the permitted rate is 21 days in arrear, or (2) the mortgagor is breaking his covenants, or (3) failing to keep the property in repair and keep down prior incumbrances. By sect. 3 nothing in the Act is to be taken as authorising an increase "except in respect of a period during which but for this Act the security could be enforced."

Now what is meant by "could be enforced"? The most natural interpretation of the expression would be "could be enforced by sale." But this interpretation appears to conflict with sect. 7, under which the mortgagee cannot call in his mortgage or take any steps for exercising a right of foreclosure or sale or for otherwise enforcing his security till interest at the rate permitted is more than twenty-one days in arrear, and the rate permitted must be the old rate without any increase till such time as the

mortgagee is in a position to sell. On this showing so long as the mortgagor keeps up his payments of interest at the original rate (unless, which is not likely, he is guilty of breaches of covenant or lets the property fall into disrepair) no increase would ever be possible. On the other hand, if "could be enforced" is read as referring to foreclosure or taking possession or as meaning that the stipulated time for payment has expired and the mortgagor is in default, the section is emptied of practical operation, and, as a result, would hardly ever prevent an increase. In the absence therefore of any discoverable interpretation which does not either unduly strain the language of the Act or go far to render its provisions nugatory, it is impossible to forecast with any certainty the view which the Courts may ultimately adopt.

There is a further difficulty beyond that connected with the method of increase, but to some extent involved therewith. Suppose the increase effectively made, what is the result? Is it only that the mortgagor must pay the increase or lose the protection of the Act, or is it also that he is personally liable? (It seems from *Hollands* v. *Cooper* (*infra*) that the mortgagor may be personally liable and yet enjoy the protection of the Act as regards enforcement of the security.) The Act apparently imposes on the statutory tenant a statutory liability of a personal nature (*ante*, p. 23), but rent and mortgage interest do not necessarily stand on the same footing and, indeed, as already pointed out, are far from exactly analogous in this respect. And is the increase a charge on the property and to be allowed in foreclosure accounts as against the mortgagor? And, if so, is it also allowable against a puisne incumbrancer? These questions are all of great difficulty.

The position is certainly rendered no clearer by the decision in *Hollands* v. *Cooper*, (1921) W. N. 298. In that case a mortgagor whose rate of interest in 1914 was 4½ per cent. agreed in September, 1914, to pay at 6 per cent. Sect. 1 of this Act did not invalidate this agreement, for it was made before March 25th, 1920; nor did the former Acts invalidate it, for it so happened that notice calling in the mortgage had been given before August, 1914, and in those circumstances there was an express exception from the former Acts. It seems clear, therefore, that the 6 per cent. increase was a valid one, and the mortgagor liable on his agreement to pay it. It was held, however, by Astbury, J., that the "permitted rate" for the purposes of sect. 7 was 4½ per cent. plus the extra percentage mentioned in sect. 4—the present section. Consequently, payment by the mortgagor of 5½ per cent. protects him against foreclosure. If this is right, then sect. 4 is apparently not, as might be thought, a mere addendum to sect. 1, but rather in the nature of an independent enactment. (For a discussion and criticism of this case, referred to doubtfully by Scrutton, L. J., in *Sinclair* v. *Powell* ((1922) 1 K. B. at p. 402), see "Law Notes," December, 1921, p. 293.)

The principle of *Goldsmith* v. *Orr* (*ante*, p. 22) would appear also to apply to mortgage interest, so that the date of the increase, and not the date of the agreement to pay the increase, is the ruling factor. Thus, where mortgagor has before 25th March, 1920 (or, as to properties which fell within the previous Acts (*post*, p. 149), August 3rd, 1914, or December 25th, 1918), agreed to pay an additional 2 per cent., the increase is irrecoverable so far as it exceeds the above limits.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

[NOTE.—For sect. 5 of the Act as it originally stood, the Rent and Mortgage Interest Restrictions Act, 1923, s. 4, substitutes a fresh section incorporating sundry amendments, and the Prevention of Evictions Act, 1924, has introduced further modifications. The section is here printed in the substituted form, the resulting additions (all of which except that on p. 51 are due to the Act of 1923), being indicated by italics. For the original form of the section, see Appendix, *post*, p. 162.]

5. *Restriction on right to possession.*—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

It is this sub-section which confers on the statutory tenant protection against ejectment. It has the effect of depriving the Court of jurisdiction to grant ejectment (*Barton* v. *Fincham*, (1921) 2 K. B. 291) save in the cases specified and (what the drafting of the Act renders liable to be missed) even in those cases it gives the Court a discretion. Hence, where the Act applies the landlord must, to obtain possession against the tenant (or sub-tenant—sect. 12 (1) (f) and (g), *post*, p. 69, see also sub-sect. (5) of this section, *post*, p. 54)—fulfil two conditions. He must (1) bring himself within one of the paras. (a) to (i) of the sub-section, and (2) must show that it is reasonable to make an order for possession (*Upjohn* v. *Macfarlane*, (1922) 2 Ch. 256; *Williamson* v. *Pallant*, *post*, p. 52). Thus, although the tenancy has determined and the tenant is not paying the increased rent under this Act, or possibly even not paying any rent at all, the Court is not to eject him unless it thinks it reasonable so to do (*Urwickee* v. *Gutkin* (1921), 55 Ir. L. T. Rep. 59). (See *post*, pp. 40, 48.) The wording in many respects is derived from the earlier Acts, but the effect of the sub-section is very different, and such decisions as the following on the old statutes have ceased to be of authority since the present Act:—*Beavis* v. *Carman*, (1920) W. N. 159; *Stovin* v. *Fairbrass*, 88 L. J. K. B.

1004; *Stephens* v. *Tatham*, (1919) W. N. 334; *Price* v. *Pritchard*, 89 L. J. K. B. 162; the Irish cases reported 53 I. L. T. at the pages mentioned:—*Hipps, Ltd.* v. *Hughes*, 111; *Sloane* v. *Cooke*, 209; *Sammon* v. *Cawley*, 224; *Gildea* v. *Conway*, 166; and the Scotch case *Smith* v. *Barclay* (1920), 1 Sc. L. T. 13. The section is not a statutory defence of which notice must be given under the County Court Rules (*Barton* v. *Fincham*, (1921) 2 K. B. 291), and the County Court must, in virtue of rule 18 of the Increase of Rent, &c. Rules, take the Act into account even if the point is not raised by the parties (*Salter* v. *Lask* (No. 1), (1924) 1 K. B. 754).

The Act gives no power to eject a tenant. It only restricts any right to possession which, apart from it, the landlord would possess, conferring no power of ejectment till any existing tenancy has been determined by notice or otherwise. It must be remembered, however, that the statutory notice of increase may amount to notice to quit determining the tenancy (Rent Restrictions (Notices of Increase) Act, 1923, *post*, p. 109).

Where such notice to quit is given, the effect of subsequent acceptance of rent is dealt with by sect. 16 (3), *post*, p. 97.

In general, no contracting out of the Act is possible. Since the section deprives the Court of jurisdiction to grant ejectment except on the grounds specified, there can (except under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), *post*) be no contracting out of the section whether in virtue of the usual clause in his lease by which the tenant agrees to give up possession on the termination of the term (*Artizans Dwellings Co.* v. *Whitaker*, (1919) 2 K. B. 301), or by subsequent independent contract (*Barton* v. *Fincham*, (1921) 2 K. B. 291).

Question was formerly raised whether a lessee for a fixed term was protected from having to give up possession at the expiration of his lease, since after determination of his lease he was no longer "a tenant." But the opinion that he was protected just as much as a tenant who received notice to quit and refused to give up possession, advanced by us in previous editions, was inferentially adopted by Mr. Justice Greer in *Vernon Investment Association* v. *Welch*, 35 T. L. R. 511, and finally affirmed in *Cruise* v. *Terrell*, (1922) 1 K. B. 664.

This section, subject to clause (c) (*infra*, p. 42), protects the tenant even if he himself gave notice to quit (*Artizans, Labourers and General Dwellings Co., Limited* v. *Whitaker*, (1919) 2 K. B. 301; *Hunt* v. *Bliss*, 36 T. L. R. 74), but it was held on the old Acts that he was in such a case liable for double rent under the Distress for Rent Act, 1737 (*Flannagan* v. *Shaw*, (1920) 3 K. B. 96, overruling the same case in the Court below). In view of sect. 15 of this Act it may be this is not now so. See, however,

the dictum of Scrutton, L. J., in *Barton* v. *Fincham*, (1921) 2 K. B. at p. 299, and *Northcott* v. *Roche*, 37 T. L. R. 364, where it was assumed without argument that *Flannagan* v. *Shaw* is still applicable. The tenant is protected from liability to double value under the Landlord and Tenant Act, 1730 (*Crook* v. *Whitbread*, 147 L. T. Newspaper, 80).

In deciding whether to give judgment for possession, the Court must consider the circumstances existing at the date of the hearing, not at the date of termination of the tenancy (*Nevile* v. *Hardy*, (1921) 1 Ch. 404; *Harcourt* v. *Lowe*, 35 T. L. R. 255; *Artizans, &c. Co.* v. *Whitaker*, (1919) 2 K. B. 301; and *Kimpson* v. *Markham*, (1921) 2 K. B. 157), nor some date subsequent to the hearing (*Lees* v. *Duley*, (1921) W. N. 283). The section does not protect a tenant who is bankrupt (*Reeves* v. *Davies*, (1921) 2 K. B. 486; *Parkinson* v. *Noel*, (1923) 1 K. B. 117, *post*, p. 95).

The Act applies to proceedings under the Small Tenements Recovery Act, 1838 (*Arnell* v. *Gover*, "Estates Gazette," 27th December, 1924), and the magistrates cannot refuse jurisdiction under that Act on the ground that the County Court would be a more fitting forum (*R.* v. *Kent Justices, Ex parte Triplow*, 43 T. L. R. 227).

(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(a) "Any rent lawfully due . . . not paid, or any other obligation . . . broken."—"Lawfully due," see note to sect. 2 (1), *ante*, p. 23. A tenant holding over in virtue of the Act is not failing to perform an obligation of the tenancy by reason of his lease containing the usual express condition for possession by landlord on termination of the lease (*Artizans, Labourers and General Dwellings Co., Ltd.* v. *Whitaker*, (1919) 2 K. B. 301). The rent must be due from the tenant personally and a statutory tenant is not within this section by reason of arrears of rent being due from his predecessor (*Tickner* v. *Clifton*, (1928) W. N. 270).

For examples of obligations under the Act, see sect. 16, *post*. In *Chapman* v. *Hughes*, 39 T. L. R. 260, where a tenant under covenant not to permit the premises to be used for any trade or business, had sub-let for a trade purpose, it was held that an order for possession could be made against the sub-tenant on the ground that (1) the sub-tenant was breaking a condition of his own statutory tenancy, his own tenancy having

incorporated the restriction on business user, and (2) that the act of the sub-lessor in sub-letting was a breach of an obligation of the tenancy. The second ground makes "obligation of the tenancy" include in the case of a sub-lessee not only his own obligation but that of the sub-lessor. It seems difficult to reconcile this with the provisions of sect. 15 (3), *post*, p. 95.

Since, as already pointed out, the Act does not authorise possession but merely restricts any right to possession which would have arisen independently, failure by the tenant to fulfil the obligations of his tenancy will confer on the landlord no right to possession unless the lease contains (as it usually will) a proviso for re-entry in such event. Even if there is a proviso for re-entry, however, and any notice required by sect. 146 of the Law of Property Act, 1925, has been given, the Court will have a discretion as to giving possession in virtue of this sub-section, which to some extent, therefore, overlaps the statutory provisions as to relief from forfeiture contained in the Law of Property Act, 1925, s. 146, and in the Common Law Procedure Act, 1852, as read with sect. 46 of the Supreme Court of Judicature (Consolidation) Act, 1925. The Court, therefore, will not necessarily grant possession even if there is a right of re-entry on non-payment of rent (*ante*, p. 38, and cp. *Reeks* v. *Shelley*, 36 T. L. R. 868). Where, however, the tenancy has been terminated and the tenant is a statutory tenant only, these provisions as to relief are not applicable (*Brewer* v. *Jacobs*, (1923) 1 K. B. 528; *Chartres* v. *Muldoon*, 57 Ir. L. T. Rep. 102).

(b)* the tenant or any person residing *or lodging* with him *or being his sub-tenant* has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, *and where such person is a lodger or sub-tenant the court is satisfied that the tenant has not before the making or giving of the order or judgment taken such steps as he reasonably ought to have taken for the removal of the lodger or sub-tenant;* or

(b) "Nuisance or annoyance."—Annoyance, according to *Tod-Heatly* v. *Benham*, 40 Ch. D. 80, is not a word with any definite legal meaning. The meaning of the word as found in restrictive

* See note at head of this section.

covenants was discussed in that case and *Wood* v. *Cooper*, (1894) 3 Ch. 671, holding that annoyance is a wider word than nuisance and covers anything which would be likely to trouble the mind or pleasure of an ordinary sensible person even if it do not amount to physical detriment to comfort. The interpretation of the word in this place must no doubt proceed on similar lines, the test being not whether annoyance is in fact caused to the complainants but whether it would be caused if they were reasonable people. Where a room or rooms are sub-let to a sub-tenant, and the sub-lessor is seeking possession thereof against the sub-tenant, it is thought that the sub-lessor would himself be an "adjoining occupier" within this clause.

"Convicted for using . . . for an illegal or immoral purpose."—For a criticism of the "absence of technical drafting" in this provision and a discussion of its interpretation, see *S. Schneiders, Ltd.* v. *Abrahams*, (1925) 1 K. B. 301, where it was held that the words covered a conviction of the tenant for receiving stolen goods on the premises (to the same effect is *Birmingham Young Men's Christian Association* v. *Gee*, reported in a note to the last case). The user need not be an essential part of the offence, otherwise using the premises as a brothel would not be within the clause, for the offence is not using but keeping a disorderly house. "It is enough if there is a conviction for a crime committed on the premises, and for the purposes of committing which the premises have been used" (*per* Scrutton, L. J., in *Schneiders* v. *Abrahams*, *ubi sup.*). The user need not be continuous or repeated (*ibid.*) *Waller* v. *Thomas*, (1921) 1 K. B. 541, where a tenant of licensed premises had been convicted of selling during prohibited hours, was held not to be a case of illegal user, but of an isolated illegality in carrying out a lawful purpose. Para. (i) (*infra*, p. 48) was introduced into this sub-section after *Waller* v. *Thomas* was decided, but now applies to such a case. Cp. also *Folan* v. *Lee*, 26 I. R. 87.

"The tenant has not . . . taken steps."—It must be remembered that "tenant" includes sub-tenant—the nuisance, &c. complained of by the superior lessor will usually enable the sub-lessor to eject his own sub-tenant. Cp., however, *Berton* v. *Alliance Economic Investment Co.*, *post*, p. 55.

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(c) "The tenant has given notice to quit," &c.—This gives statutory effect to the decision on the former Acts of *Green-Price* v. *Webb*, 112 L. T. 491. Cp. also *Hunt* v. *Bliss*, 36 T. L. R. 74. A notice to quit within the meaning of this para. given by the tenant operates to bring the sub-lessee also within this para. (*Hylton* v. *Heal*, (1921) 2 K. B. 438). "Notice to quit" is to be understood in the technical sense, and this para. does not cover the case of a tenant agreeing to surrender his tenancy (*Standingford* v. *Bruce*, (1926) 1 K. B. 466; *De Vries* v. *Sparks*, 43 T. L. R. 448. Cp. also *Barrett* v. *Marshall*, 54 Ir. L. T. Rep. 214; *Gilbert* v. *Jordan*, (1920) W. N. 309, so far as it suggests the contrary, is overruled by the later decisions).

(d)* the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, *or for any son or daughter of his over eighteen years of age*, or for any person bonâ fide residing with him, or for some person *engaged* in his whole time employment or in the whole time employment of some tenant from him, *or with whom conditional on housing accommodation being provided a contract for such employment has been entered into*, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation *is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character and proximity to place of work and which consists either of a dwelling-house to which this Act applies or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies;* or

(d) "Reasonably required."—It may be this though the lessor has been obliged to obtain other premises where he is temporarily resident (*Nevile* v. *Hardy*, (1921) 1 Ch. 404). The Court must be satisfied not only that possession is reasonably required by the landlord, *e.g.*, on the ground of nearness to business (*Jackson* v. *Harbour*, "Estates Gazette," April 5th, 1924), but also that

* See note at head of this section.

circumstances are otherwise such that it is reasonable to make the order (*Williamson* v. *Pallant*, (1924) 2 K. B. 173; *Shrimpton* v. *Rabbits*, 40 T. L. R. 541, *post*, p. 48).

"For some person in his whole time employment."—Under the section as it originally stood, these words were held to mean a person already in the employ at the date of hearing, not, *e.g.*, a foreman whom the landlord was about to employ (*Rex* v. *Rogers, Ex parte Hodson*, (1918) W. N. 128), or even a person who was already engaged but had not yet actually commenced working being prevented by the lack of accommodation (*Spencer* v. *Fox*, (1922) W. N. 141). But the sub-section as now amended will, of course, cover such cases. The words "whole time" override the decision under the earlier Acts in *Wall* v. *Gibbs*, (1920) W. N. 187, that the employment need not be exclusive.

"Alternative accommodation."—Observe that alternative accommodation is not necessary in the cases mentioned below, *post*, p. 49 *et seq*. The onus of proof of alternative accommodation is on the landlord (*Nevile* v. *Hardy*, (1921) 1 Ch. 404). In an Irish case (*Keiran* v. *Dunne*, 54 I. L. T. 51) it was said that while the plaintiff may have the onus of proving that there is available alternative accommodation, the defendant has also the onus of proving that such alternative accommodation does not exist; but this cannot be relied on since *Nevile* v. *Hardy* (*ubi sup.*). Technically the landlord need not himself tender the alternative accommodation if he can otherwise prove that it exists (*Bazalgette* v. *Hampson*, (1920) W. N. 59). The date for testing availability is that of the hearing (*Nevile* v. *Hardy*, (1921) 1 Ch. 404; *Kimpson* v. *Markham*, (1921) 2 K. B. 157). "Available" alternative accommodation means "available to the particular tenant": it is not enough to show that there is accommodation in the district if the owner would be unwilling to let to the tenant whom it is sought to eject (*Topping* v. *Hughes* (1925), N. Ir. 90).

Alternative accommodation figured in the earlier Acts, but the accompanying language was different. Decisions on those Acts, such as *Wilcock* v. *Booth*, 36 T. L. R. 213, and even decisions on the present Act prior to its amendment in 1923, will not necessarily apply to the Act in its amended shape. The test under the sub-section in its original shape was comparison with the house included in the tenancy: under the sub-section as amended, the test is the means and needs of the tenant and his "family." The exact meaning of "family" is not very clear—possibly the word may have an extended sense as including all usual members of the household. And having regard to the fact that the Act covers houses of considerable size, an interpretation which includes servants would perhaps here be a reasonable one. Just possibly, indeed, lodgers as such might be included. On the other hand,

it must be remembered that the expression "family" occurs also in sect. 12 (1) (g) of this Act where an interpretation including servants and lodgers is not probable. It has been held on that section that "member of the family" includes a husband (*Salter* v. *Lask* (No. 2), (1925) 1 K. B. 584).

The concluding words of this paragraph require that the alternative accommodation shall be either:—

(1) Another house within this Act. This will probably rarely happen, since, if the house is vacant, it will usually be *ipso facto* outside the Act (sect. 2, Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 120). Or

(2) Another house available on terms which give security of tenure equivalent to that of the Act. This seems to mean that it would be sufficient if the tenant could lease a suitable house on suitable terms for a period not expiring before the protection of the present Act expires. It is, however, arguable whether even then if the lease contains the usual proviso for re-entry the tenant's position under the lease is reasonably equivalent to that which he would have occupied under the Act, which would give the Court a discretion as to ejecting him even for non-payment of rent, &c. (*ante*, p. 38). Where, however, a tenant vacates a controlled house in consideration of lessor letting to him another house, no contract is implied that the other house is controlled (*Wilson* v. *Flint*, "Estates Gazette," Dec. 4th, 1926).

The alternative accommodation need no longer as formerly (*Wilcock* v. *Booth*, 122 L. T. R. 678; *Bazalgette* v. *Hampson*, (1920) W. N. 59, and *Nathan* v. *Hart* (*Daily Telegraph*, 5th June, 1919)) necessarily be in the same neighbourhood; it suffices that the locality is reasonably near the tenant's work, and suitable as to the nature of the district, &c. Probably, also, formerly the alternative accommodation had to include accommodation for lodgers (cp. *Chiverton* v. *Ede*, (1921) 2 K. B. 30; *Dowling* v. *Butler*, 54 Ir. L. T. 199): it seems doubtful whether this is any longer so, unless perhaps on the ground already discussed that the lodger is a member of the family. In *Thompson* v. *Rolls*, (1926) 2 K. B. 426, the owner of a seven-roomed house sought possession under the present clause from a tenant who had sub-let two rooms furnished, the owner offering to allow the tenant to retain the five rooms still occupied by him. It was held that the five rooms at what was practically though not technically an apportioned rent constituted alternative accommodation, and plaintiff was given possession of the house on undertaking to let the five rooms forming part thereof to the defendant. The case is not free from difficulty, and no reference was made to security of tenure, but it appears to have been followed in *Thomas* v. *Evans* ("Estates Gazette," Digest of Cases, 1927, p. 83).

Where a husband living apart from his wife took a house for her and the family, alternative accommodation was not shown because

the husband was himself living in a house in which, if his wife returned to him, she might also live (*Crutchley* v. *White*, 36 T. L. R. 249). Nor did it necessarily follow that there was alternative accommodation because the tenant had a house in town in addition to the house of which he was tenant and in which he resided during week-ends (*Flint* v. *Ead*, (1921) W. N. 182). Cp. however, *Cruise* v. *Terrell*, (1922) 1 K. B. 664. These decisions also may possibly require reconsideration in light of the amended wording.

It was decided on the old wording in *Irvine* v. *Nelson* (56 Ir. L. T. Rep. 107 (contrary, however, to *Wilcock* v. *Booth* (122 L. T. R. 678) also on the old Act) that a dwelling-house with no shop combined was no alternative accommodation for a dwelling-house with a shop. This will, it is thought, usually still be the case. See also *Williamson* v. *Pallant*, *post*, p. 52.

This clause will apparently enable the superior lessor who recovers against his tenant to recover possession also against the sub-tenant of the premises, whether he be sub-tenant of the whole or of part (cp. *Reynolds* v. *Bannerman*, (1922) 1 K. B. 719). But judgment for possession must be obtained against the sub-tenant as well as the tenant (see sub-sect. (5), *post*, p. 54). Where part is sub-let, as to whether there is any objection to confining the claim against the tenant to the residue of the premises not sub-let, see *Salter* v. *Lask* (No. 1), (1924) 1 K. B. 754, and *Thompson* v. *Rolls*, *ante*, p. 45.

(e)* the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of *a local authority or statutory undertaking or for any purpose which in the opinion of the court is in the public interest*, and the court *in either case* is satisfied as aforesaid as respects alternative accommodation; or

For the definition of statutory undertaking, see sect. 12 (1) (i), and as to alternative accommodation, *ante*, p. 44. It may be mentioned conveniently in this place that by the Housing Act, 1925, s. 128, "Nothing in the Rent and Mortgage Interest (Restrictions) Act, 1920, or in the enactments amending that Act, is to be deemed to affect the provisions of Part I. of this Act relating to the obtaining of possession of a house with respect to which a closing order has been made or to prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under this Act or under any scheme made under this Act or any enactment repealed by this Act."

* See note at head of this section.

This reproduces and replaces sect. 35 of the Housing, Town Planning, &c. Act, 1919, as amended by the Housing, Town Planning, &c. Act, 1923, which provisions were held (confirming the opinion expressed in a previous edition of this book) unaffected by the subsequent passing of the Rent and Mortgage Interest Restrictions Act, 1923 (*Parry* v. *Harding*, (1925) 1 K. B. 111). In cases falling within sect. 128 of the Housing Act, 1925, possession will be recoverable without reference to the provisions of the Rent and Mortgage Interest (Restrictions) Acts, whether as to alternative accommodation or otherwise. Cp. *Parry* v. *Harding* (*ubi sup.*). Under the original wording the para. only applied where the local authority or statutory undertaking was the landlord. The present para. appears to cover actions by the owner under the Housing Act, 1925, s. 13.

In *Gooch* v. *Stratman* (43 T. L. R. 475), where a landlord required possession in order to erect a warehouse alleged to be greatly needed in the district, a Divisional Court refused possession under this para. on a finding of fact by the County Court judge that "public interest" was not involved. But it must not be assumed, said the Court, that the para. could not under any circumstances apply to such a case (cp. *City of Dublin Hospital* v. *Brownrigg*, 58 Ir. L. T. R. 91 (decided, however, on the different wording of a Free State statute), and *Mitchell* v. *Townend*, (1921) 2 K. B. 91).

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

"Became the" landlord.—Cp. p. 51 (para. (iv)) and see note thereto, p. 52.

See also on this para., *Kentish* v. *Sneath*, 37 T. L. R. 586, and *Squier* v. *Hore*, (1921) W. N. 313. "Landlord" includes a tenant who has sublet (*Logan* v. *Fair*, (1922) S. C. 76).

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war; *or*

Goodwin v. *Rhodes*, (1921) 2 K. B. 182, has affirmed the view expressed in previous editions that this gives no power to the former tenant to sue—the action must be by the landlord.

"Required"—*i.e.*, by the landlord for a former tenant. Clause (f) and not this clause applies where a former tenant sublet and on demobilisation requires possession from the sublessee (*Messenger* v. *Hutton*, (1921) W. N. 101).

(h) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or*

This was a new clause introduced by the Act of 1923. Since the statutory tenancy is not assignable (*Keeves* v. *Dean*, *post*, p. 92), this clause can only refer to assignments of an existing tenancy. It will apply where there has been such an assignment after July 21st, 1923, even though there is no restriction on assignment in the lease, while if the assignment is in breach of covenant, the case falls also within clause (a), *ante*, p. 40. This clause, like the other clauses, is subject to the overriding requirenant, the case falls also within clause (a), *ante*, p. 40. This contemplates voluntary assignment *inter vivos*.

(i) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused;*

This clause also is new and first introduced by the Act of 1923. As to licensed premises, see *Epsom Grand Stand Association, Ltd.* v. *Clark*, (1919) W. N. 170, *post*, p. 74.

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

"The Court considers it reasonable." It is important to observe that this qualifies the whole sub-section. See the note, *ante*, p. 38, and *Williamson* v. *Pallant* ((1924) 2 K. B. 173, *post*, p. 52) and *Shrimpton* v. *Rabbits* (40 T. L. R. 541).

* See note at head of this section.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

Alternative accommodation is only material if clause (d) or (e) is relied on, and as to clause (d) not then if the case is one of the four next specified. *Smith* v. *Bridgen*, (1920) W. N. 106, has no application to the present Act.

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

This clause applies even if the termination of the tenancy preceded that of the service, if the tenant held over under the Act (*Lever Bros., Ltd.* v. *Caton*, 37 T. L. R. 664). Where, however, service and tenancy terminated before there were any Rent Acts to protect the tenant, but the employee was allowed to remain under a new tenancy, alternative accommodation was required (*Great Northern Ry. Co.* v. *Best*, 55 I. L. T. Rep. 57). See "Law Notes" for June, 1921, p. 151; *Bute* v. *Penderleith* ((1921), Sc. L. R. 290) suggests that where a tenancy is in virtue of service, *e.g.*, where the employer lets a cottage to a gamekeeper, the tenant holding over after termination of service would not be performing the obligations of the tenancy, since this includes rendering service as gamekeeper. *Sed quære.* The clause is not applicable merely because the tenant is also an employee—the letting must be in consequence of the employment. Nor will the letting be this, merely because but for the employment the lessor would "not have let." The words mean that both the landlord and tenant know that the premises were let to the tenant in consequence of his employment (*Frederick Braby & Co., Ltd.* v. *Bedwell*, (1926) 1 K. B. 456; *Queen's Club Gardens Estates, Ltd.* v. *Bignell*, (1924) 1 K. B. 117).

In this connection it may be pointed out there may frequently be occupation by a servant without a tenancy, as where a chauffeur occupies a room over the garage. Here the servant, though often referred to as a "service tenant," is not legally a tenant and is in no way protected by the Act (*National Steam Car Co.* v. *Barham*, 122 L. T. 315; *Bute* v. *Penderleith* (1921), Sc. L. R. 290; *Bond* v. *Pottle*, *Times* Newspaper, Jan. 15th, 1921; *Bracey* v. *Pales*, (1927) 1 K. B. 818; *Turner* v. *Watts*, 44 T. L. R. 105). Cp. *Ecclesiastical Commissioners* v. *Hilder*, 36 T. L. R. 771, where it was said also the Act would not apply to a tenant at will paying no rent. (As to tenants at no, or a low, rent, see sect. 12 (7),

infra, p. 84.) The general test whether the servant occupies as tenant is whether it is essential or required of him that he should reside in the premises for due performance of his duties (*Dobson* v. *Jones*, 5 Man. & G. 112; *Clarke* v. *St. Mary, Bury St. Edmund's, Overseers* (1856), 1 C. B. (N. S.) 23. See Halsbury's Laws of England, Vol. 20, p. 69). In cases where there is any doubt whether the occupant is in strictness a tenant, proceedings should not be taken under the Small Tenements Recovery Act, 1838, for should it prove that there is no tenancy, the justices have no jurisdiction. In such cases also a writ claiming ejectment should not be specially endorsed, as this may estop the lessor from denying a tenancy (*Ecclesiastical Commissioners* v. *Hilder, ubi sup.*), while in any event, an action for ejectment against a statutory tenant is not a proper case for Ord. XIV. proceedings (*Gill* v. *Luck*, (1923) W. N. 284).

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or* *with whom, conditional on housing accommodation being provided, a contract for employment on such work has been entered into; or*

The Court cannot go behind the certificate (*Smith* v. *Primavesi*. (1921) W. N. 291), though the question of reasonableness, of course, is for the Court (*ante*, p. 48). Cp. as to the concluding words note to para. (d), *supra*, p. 43). For the fees payable on obtaining this certificate, see *post*, p. 141. The Law Society's Council have passed a resolution that this certificate should not be granted by the Ministry without previous communication with the tenant, as is alleged to have sometimes been done ("Law Society's Gazette," May, 1924).

Where an agricultural labourer was allowed to occupy a cottage, 1*s*. per week being deducted from his wages in respect thereof, this Act did not prevent an increase of the deduction to 3*s*. per week, being the deduction authorised by the Corn Production Act, 1917, to be made from the minimum wage under that Act where the labourer was allowed occupation of premises. The deduction was not by way of rent, but as representing a

* See note at head of this section.

benefit in lieu of cash (*Baker* v. *Wood*, (1920) W. N. 53). The Corn Production Act is now repealed, but the decision may still be useful in connection with the Agricultural Wages (Regulation) Act, 1924.

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

(iv) *Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May,* 1924) *for occupation as a residence for himself or for any son or daughter of his over eighteen years of age and the Court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.*

This clause (iv), introduced into this section by the Prevention of Evictions Act, 1924, replaces two clauses which also were not originally in the section, but were introduced by the Rent and Mortgage Interest Restrictions Act, 1923 (see *post*, p. 129). Before the amendment, where a landlord reasonably required possession for his own occupation or that of a son or daughter over eighteen, alternative accommodation was never necessary, the only question being whether it was reasonable to order ejectment, and also in cases where the landlord or husband or wife of the landlord did not become so before June 30th, 1922, whether it was greater hardship to make or refuse the order. The position is now as follows:—

Alternative accommodation is essential if possession is sought for purposes of residence by the landlord or his son or daughter over eighteen by a landlord who became so by purchase after May 5th, 1924 (date of the third reading in the Commons of the Prevention of Evictions Act, 1924). In other cases (*e.g.*, where the landlord bought before May 6th, 1924, or acquired after May 5th, 1924, by devise or inheritance), it will not be absolutely essential to prove alternative accommodation, but the Court must consider the balance of hardship, taking into account (*inter alia*)

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for that purpose the question as to alternative accommodation available not only to tenant but to landlord. The Court must, of course, also take into account all other circumstances, *e.g.*, that the house comprises shop accommodation, and that on ejectment the tenant would lose his goodwill (*Williamson* v. *Pallant*, (1924) W. N. 144).

As to "greater hardship," see *Dowling* v. *Butler* (54 Ir. L. T. 199) and *Cruise* v. *Terrell* ((1922) 1 K. B. 664). "Become landlord by purchasing"—whether this refers to the date of the contract or date of completion of the purchase by conveyance is a moot point. The former wording, "became the landlord," was held in *Barrett* v. *Marshall* ((1920) 54 I. L. T. 154) to refer to the contract date, though the decision was perhaps questionable. On the present wording it may be argued that the contract itself makes the purchaser landlord by giving him an equitable "interest" in the premises.

It has been held in Ireland that the hardship to be taken into account is hardship to landlord or tenant, not, *e.g.*, to relations living with the tenant (*Cooley* v. *Walsh*, (1926) Ir. R. 239).

For the effect of this clause on judgments already given, see sect. 2 of the Prevention of Eviction Act, 1924, *post*, p. 144.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

This sub-section repeats with slight modifications sect. 1, subsect. (2) of the Increase of Rent, &c. (Amendment) Act, 1919 In *Kelly* v. *White, Penn Gaskell* v. *Roberts*, (1920) W. N. 220, it was held on the former Acts that the Court had no power to make an order for possession with "execution stayed as long as the tenant pays rent at the agreed rate." The relevant provision of the Act, however, corresponding to sub-sect. (2) above,

was apparently not called to the Court's attention, while in any case, having regard to the difference in sect. 5 of this Act as compared with the old provisions to which it corresponds, the decision is perhaps of dubious application to the present Act. No doubt the power to stay execution must be exercised judicially, but an order staying execution indefinitely, if limited to apply only while the present Act is in force, would seem to be within the wording of the sub-section.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

This repeats the Increase of Rent, &c. Amendment Act, 1919, s. 1 (3). Rescission or variation is discretionary, not obligatory (*Taylor* v. *Faires*, 37 T. L. R. 55). See on this sub-section, *Rossiter* v. *Langley* (deciding that the section applies even to consent orders, and distinguishing *Wellesley* v. *White*) and *Comyn* v. *Leask* (1921), I. L. T. Rep. 13.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888 (51 & 52 Vict. c. 43), or in section one of the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

Under sect. 143 of the County Courts Act, 1888, a warrant for possession, whenever issued, is to bear date on the day succeeding the last day for delivery of possession allowed by the judgment, and shall continue in force for three months from that date and

no longer. Under sect. 1 of the Small Tenements Recovery Act, 1838, the warrant for possession must be executed within thirty clear days of that date. This sub-section provides for an extension of these times.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

Cp. sect. 12 (1) (f) and (g), and sect. 15 (3). Cp. also *Hylton* v. *Heal*, *ante*, p. 43, and note to sect. 5 (1) (d), *ante*, p. 46. There was no express provision before the Act of 1920, but in *Cottell* v. *Baker*, (1920) W. N. 46 (cp. *Murphy* v. *Porter*, 53 I. L. T. 151), where a tenant of premises not falling within the earlier Acts sublet part of the premises as a dwelling-house at a rent which came within the Acts, they were held to protect the under-lessee against the superior landlord. *A fortiori* under the present Act this is so (subject to the amended sect. 5 (1) (h)). Under the old Acts, however, it was necessary that the underlease should not be a breach of covenant (*Dick* v. *Jacques*, 36 T. L. R. 773; *Cottell* v. *Baker*, *ubi sup.*). (This last case also decides, following earlier authority, that a sub-lease of part is not a breach of covenant against subletting the whole premises.) Under this section, the words "lawfully sublet" seem to point to a similar result, and, having regard to the judgments of the Court of Appeal in *Roe* v. *Russell* ((1928) 2 K. B. 117), it may be taken as established that the Act does not protect against ejectment a sub-lessee to whom a sub-lease has been made in breach of covenant.

Where the tenant delivers up possession but the sub-tenant holds over under the Act, no liability attaches to the tenant (*Reynolds* v. *Bannerman*, (1922) 1 K. B. 719). But if the tenant himself surrenders possession and ceases to be a statutory tenant, he is liable in damages for failure to give vacant possession (whether under express covenant to do so or not) where the holding over is by someone claiming under him (*e.g.*, a caretaker) not entitled to hold as statutory tenant (*Henderson* v. *Van Cooten*, (1922) W. N. 340). Where a lessee is under covenant not to permit the premises to be used except as a private dwelling-house and takes a similar covenant from his sub-lessee, if that sub-lessee in breach of covenant sublets the different floors as weekly tenements, and the lessee thereupon enforces the forfeiture against his sub-lessee but

does not proceed against the weekly tenants, being advised that the Act would afford them a defence, this is not a breach of covenant by the lessee (*Berton and Others* v. *Alliance Economic Investment Co.*, (1922) 1 K. B. 742). Cp. *Atkin* v. *Rose*, (1923) 1 Ch. 522. The sub-lessee continues protected by the Act though the lease is forfeited by the sub-lessor's breach of covenants in the head lease (*Ward* v. *Larkins*, (1923) W. N. 189).

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order* *or judgment* was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

See note to next sub-section, and for a possible alternative remedy, see *French* v. *Lowen*, *post*, p. 100.

(7) **The provisions of the last preceding subsection shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three, obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (d) of subsection (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.*

See *post*, p. 128, where this sub-section is further dealt with.

* See note at head of this section.

It has been suggested by his Honour Judge F. E. Bradley ("Law Quarterly Review," October, 1923, p. 457) that an ejectment order made on the grounds specified in this or the preceding sub-section might desirably be prefaced with a statement that it is based on these grounds, thus, if necessary, facilitating proof later that these sub-sections apply.

6. *Restriction on levy of distress for rent.*—No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession:

See *Townsend* v. *Charlton* ((1922) 1 K. B. 700) for a discussion of the principles upon which the Court should act under this section. This section will usually have no application to ground rents (*post*, p. 84).

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

Sect. 160 of the County Courts Act, 1888, provides in substance that on a County Court execution, if the landlord gives notice to the bailiff that rent is in arrear, the bailiff is to combine distress with the execution, and before payment to the execution creditor deduct for the landlord's benefit four weeks' rent in the case of weekly lettings, rent for two terms of payment if the letting is for less than a year, and rent for one year in other cases.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

The Courts (Emergency Powers) Acts have now been repealed.

7. *Restriction on calling in of mortgages.*—It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(b) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

The Act only applies to mortgages created before July 2nd, 1920 (sect. 12 (4), *post*, p. 82).

Where a mortgagor being more than twenty-one days in arrear with his interest, foreclosure proceedings were commenced, subsequently to which the mortgagor sent a cheque which the mortgagee accepted generally on account, it was held that the mortgagor was no longer protected by this section, and a foreclosure decree was made (*Evans* v. *Horner*, (1925) Ch. 177). See this decision questioned in the Irish case of *Wallace* v. *Fogarty*, (1926) Ir. Rep. 255, 257.

The retention of rents by a mortgagee in possession is not a payment of interest within this provision, nor will the property be deemed to be repaired because the mortgagee might have repaired it out of the rents (*Walters* v. *White*, 33 T. L. R. 154). The "proper state" of repair is ascertained by reference to the state of repair at the date of the mortgage (*Woodifield* v. *Bond* (*No.* 2), (1922) 2 Ch. 40, followed in *Hutchinson's Trustee* v. *Downie's Trust* ((1923) Scotch L. T. Rep. 49). It was held in *Hollands* v. *Cooper* ((1921) W. N. 298) that even where the increase took place before March 25th, 1920, and was valid when made, this section prevented the mortgagee foreclosing as long as interest was paid at the rate specified in sect. 4. The decision is not altogether easy to follow. See *ante*, p. 37.

The language of this sub-section is very wide. In cases where it applies a notice calling in a mortgage will be inoperative to enable mortgagee to sell, and any purported sale void. The mortgagor might, no doubt, obtain a declaration that the notice is invalid, and with an order for costs, but there is no need to take proceedings. A purchaser from the mortgagee would not get a good title if the mortgagor had fulfilled the conditions set out in the section. (See *post*, p. 59.) And a mortgagee under this sub-section cannot even commence foreclosure proceedings or continue proceedings begun before the Act was introduced (*Welby* v. *Parker*, (1916) 2 Ch. 1), or sue on the covenant for repayment (see, *e.g. London County and Westminster*

Bank v. *Tomkins*, *post*, p. 82). The sub-section also prevents the mortgagee from taking possession from the mortgagor, though not from a second mortgagee (*Kirk* v. *Cunnington*, as reported 37 T. L. R. at p. 938), and he cannot eject a tenant of the mortgagor though the tenancy is void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332; see also sect. 12 (1) (f)). And it may prevent the appointment of a receiver, though such an appointment is not within the mischief of the Act, and the point is arguable. It is not of great importance, since the happening of an event to make the power of appointing a receiver exercisable under the Law of Property Act, 1925, will nearly always take the case out of the sub-section altogether.

This section apparently protected a mortgagor in possession (*Woodifield* v. *Bond* (No. 1), (1921) W. N. 309, *post*, p. 72), but such a case seems now to fall within the decontrol provisions of the Rent and Mortgage Interest Restrictions Act, 1927, s. 2 (1) (*post*, p. 120).

In cases where the mortgage contains an attornment clause there may be a question as to whether the mortgagor can claim any protection in his capacity of tenant, but the question will not arise unless he attorns tenant at a sufficiently high rent (sect. 12 (7); *Jenkinson* v. *Wright*, (1924) 2 K. B. 645), and unless the tenancy is not merely at will (*ante*, p. 49). The conversion of the mortgagee's estate into a term of years by the Law of Property Act, 1925, does not appear to affect the position under this Act.

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it

is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

As to sales by mortgagees, cp. further, *post*, p. 64.

The practical effect of sect. 19 of this Act, and sect. 38 of the Interpretation Act, 1889, is, it would seem, to substitute for 25th March, 1920, the date 25th November, 1915, as to houses which were within the 1915 Act, and 4th March, 1919, as to those within the 1919 Act. For as to those houses these repealed Acts would usually have operated to prevent possession being taken, and even if possession has been taken in defiance of their provisions, so that the mortgagee had *de facto* possession on March 25th, 1920, yet it would appear that he could not validly exercise the power of sale. An opinion to this effect, expressed in a former edition, is now confirmed by *Anchor Trust Co.* v. *Bell*, (1926) Ch. 805. In that case it was held that where a mortgagee had taken possession in contravention of the similar provisions of the (now repealed) Courts (Emergency Powers) Act, he was not thereby enabled to sell, and a purported sale, at any rate to a purchaser with notice, operated therefore merely as a transfer of the mortgage. Sect. 21 (2) of the Conveyancing Act, 1881, was not applicable to protect the purchaser. This provision is now replaced by the Law of Property Act, 1925, s. 104 (2), with modifications which, however, do not affect the point under discussion, since they only affect mortgages made after 1925, to which the present Act has no application. The Irish decision of *Provident Association of London and Gollogally's Contract* ((1917) 1 Ir. R. 240), which seems to treat the power of sale as validly exercised in the circumstances mentioned, cannot be relied on since *Anchor Trust* v. *Bell*. The mortgagee is not a mortgagee in possession by reason of his having appointed a receiver.

Even where the mortgage is payable by instalments as stated, or the mortgagee is in possession, sect. 1 applies, and the rate of interest cannot be raised, though the mortgagee is not restrained from selling, foreclosing, &c. Notwithstanding that the proviso dealing with mortgagees in possession refers in terms to the power of sale only, the remedy of a mortgagee in

possession is not limited to selling, and a mortgagee in possession can not only sell, but can foreclose or exercise his power of sale if the mortgagor has not fulfilled the conditions necessary to give him the protection of this section. The position is, of course, the same as to the mortgagee's other remedies (*Walters* v. *White*, 33 T. L. R. 154).

The second clause of the proviso obviates a hardship that might otherwise arise where money has been lent on leaseholds. A freehold mortgage has not been brought within this clause by the conversion of the mortgagee's interest into a term of years under the Law of Property Act, 1925.

3. *Restriction on premiums.*—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

This section loses some of its importance since the decontrol provisions under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1) (*post*, p. 120), and, moreover, does not apply to premiums on a lease falling within sect. 2 (2) of that Act (*Bell* v. *Steel*, "Estates Gazette," July 12th, 1924). As to the meaning of "fine, premium, or other like sum," cp. *Sharp Brothers and Knight* v. *Chant*, *post*, p. 88. For circumstances connected with a tied house held not within this section, see *Brakspeare* v. *Barton*, (1924) 2 K. B. 88. As to the case where the grant of a tenancy is made conditional on the purchase by the tenant of fixtures at an exorbitant figure, see the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 134.

The view expressed in former editions that the sub-section does not apply to "key money" except where required by the landlord or sub-lessor, was affirmed in *Remmington* v. *Larchin*, (1921) 3 K. B. 404, and *Mason, Herring and Brooks* v. *Harris*, (1921) 1 K. B. 653. Nor does this section cover a premium to lessor on his consenting to an assignment (*Strathern* v. *Beaton* (1923), 59 Sc. L. R. 559). The decisions of a Divisional Court in *Katsman* v. *Barnett* ("Estates Gazette," March 15th, 1924) and *Reuben* v. *Larsen* (unreported, but referred to in the last case) seem to favour a contrary view, but if so it is submitted the Scotch decision is preferable. As to premiums exacted by a lessee, see sect. 15 (2), *post*, p. 95. In *Rush* v. *Matthews*, (1926) 1 K. B. 452, a landlord verbally agreed to let a house with a standard rent of 13*s*. 6*d*. weekly at a weekly rent of 25*s*. The arrangement was carried out by a lease for fourteen years, determinable by the tenant on a week's notice, at a weekly rent of 13*s*. 6*d*., plus a weekly premium of 11*s*. 6*d*. It was held that, looking at all the circumstances, the 11*s*. 6*d*. was not a premium permitted by sub-sect. (3) of this section, but rent within the meaning of the Act, and therefore irrecoverable from the tenant.

The language of sub-sect. (2) is consistent with the mere demand of a premium amounting to an offence, though on the other hand the provision being penal is to be strictly construed, and it is arguable that the concluding words contemplate that the demand shall have been complied with by the tenant or sub-tenant. Cf. the language of sect. 15, sub-sect. (2). As to "other method of recovery," see sect. 14 (1).

The third sub-section meets such a case as *Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64, where a scheme, in the interest of tenants, under which they were to receive long leases at a reduced rent in consideration of a money payment, fell through owing to

the impossibility under the Act of 1915 of compelling payment of the premium. Independently of this sub-section, the case seems now covered by the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (2), *post*, p. 121.

9. *Limitation on rent of houses let furnished.*—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

In this section "Lessor" and "lessee" must now be read as "Landlord" and "tenant." (Rent and Mortgage Interest Restrictions Act, 1923, s. 10 (2).)

This section only applies to dwelling-houses which, apart from the fact of their being let furnished, would fall within the Act, having regard to their rent and rateable value—at least this seems to be the effect, though the words "dwelling-house to which this Act applies" are not very apt for the purpose, since the Act does not, apart from this section, apply to houses let furnished. It may be indeed that on a strict interpretation this section has no application unless the house was on 3rd August, 1914, or has since been let unfurnished, and does not apply where there has never been a letting on 3rd August, 1914, or thereafter.

The section does not bring furnished houses within the general provisions of the Act, which does not prevent the landlord suing for possession of a furnished house if entitled thereto.

"After the passing of this Act," *i.e.*, 2nd July, 1920. The section applies whenever the tenancy commenced, but only

applies to excess rent paid in respect of a period after that date, and subject to the time limit under the Rent and Mortgage Interest Restrictions Act, 1923, s. 8.

The definition of normal profit may give rise to difficult cases. In the case of a furnished house at the seaside, *e.g.*, the rent and profit obtainable vary considerably according to the time of year. The words "similar letting" apparently involve a July let of 1920, or some later year, being compared with a July let of 1914.

In *Truss* v. *Olivier*, 40 T. L. R. 588, it was said the correct principle is to ascertain the 1914 normal profit of a furnished let, and then ascertain what rent would, allowing for the rise in prices, &c., produce that profit with an additional 25 per cent.

Cp. note to sect. 12, sub-sect. (2), proviso 1, *post*.

10. *Penalty for excessive charges for furnished lettings.*—Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

"Lessor" and "lessee" are here also to be read as in the last section (*ante*, p. 62). Sect. 10 of the Rent and Mortgage Interest Restrictions Act, 1923, *post*, p. 134, has rendered this section of little practical importance.

11. *Statement to be supplied as to standard rent.*—A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is

the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

Since, by definition (sect. 12 (1) (a), *post*, p. 66), standard rent is not necessarily that actually payable by the tenant, which may be a higher figure and include the permitted increases under this Act, the convenient thing would be for the landlord to state the standard rent and add particulars as to the increase made. The tenant making a written request under this section would be prudent to obtain the landlord's signature to a duplicate copy or otherwise provide evidence on the point.

It is, perhaps, a defect that only tenants get the benefit of this provision. A purchaser also is vitally concerned to know the standard rent—he will himself otherwise be unable to comply with this section (though, no doubt, he will have "reasonable excuse") or to know the rent he may himself properly exact. This section, however, gives him no right to the information, and whether he is entitled to it independently will probably depend on the terms of the contract and the circumstances generally.

The effect of the Act with regard to purchasers may be noted here. Where the purchaser is entitled to vacant possession, the existence of a statutory tenant will be ground for refusing to complete. This will be so even though the contract incorporates Condition 10 of the National Conditions of Sale, 1925, though the Condition will apparently prevent the purchaser from obtaining damages (*Curtis* v. *French*, (1928) W. N. 278). But where a contract with no special provision as to vacant possession was entered into before the principal Act was passed, the vendor was granted specific performance notwithstanding that a statutory tenancy had come into existence before completion (*Matthews* v. *Walker*, "Estates Gazette," April 10th, 1923). *A fortiori*, as to contracts since the Act. In the case of a purchase from a mortgagee selling under his statutory power of sale, it will presumably be incumbent on the vendor to show either that rent and rateable value take the property outside the Acts, or that, *e.g.*, by reason of the mortgagee having been in possession at the material date, the power of sale is not affected, and a statement showing the Acts to be inapplicable should form part of the abstract in such cases. As to the material date of possession, see remarks on *Provident Association of London and Gollogally's Contract* and *Anchor Trust Co.* v. *Bell*, *ante*, p. 59. The purchaser will be entitled to evidence of this, though if that evidence (*e.g.*, a statutory declara-

tion) be not already in vendor's possession, the purchaser can only require it at his own expense (*Re Wright and Thompson*, (1920) 1 Ch. 191).

APPLICATION AND INTERPRETATION OF ACT.

12. *Application and interpretation.*—(1) For the purposes of this Act, except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

In considering the standard rent, it must be borne in mind that the following cases are exceptionally treated.

(1) Where at the critical date the rent was less than the rateable value at that date. Here the rateable value at that date will be the standard rent unless the case falls within sub-sect. (7), *post*, p. 84, which deals with cases where the rent is less than two-thirds of the rateable value.

(2) Cases of a progressive rent, where the standard rent will be the maximum payable.

A progressive rent means a rent which is periodically increased, not, *e.g.*, a rent which is to be at a higher figure during the last year of the tenancy (*Goldsmith* v. *Orr*, (1920) W. N. 250), and it is not a progressive rent where premises are let for a term with an option to renew from time to time, the rent increasing

each time the option is exercised (*Pond* v. *Barber*, "Estates Gazette," June 9th, 1923).

(3) Cases of houses erected after or in course of erection at 2nd April, 1919. These are not within the Act, and have no standard rent (sub-sect. (9), *post*, p. 85).

(4) Cases of reconstructed houses. If the reconstruction falls within sect. 12 (9), the house will not be within the Act and will have no standard rent, otherwise the house will be still within the Act, but the reconstruction, while not sufficient to satisfy sect. 12 (9), may in some cases make the house sufficiently a new one to constitute the time of the first letting after the date of reconstruction the critical date by which to decide the standard rent (see *post*, p. 80).

As to standard rent generally.—Where lessor agrees to pay the rates the amount of the rates cannot be deducted for the purpose of computing the standard rent (*Westminster and General Properties Investment Co.* v. *Simmons*, (1919) W. N. 241; *Isaacs* v. *Tittlebaum*, (1920) W. N. 29; *Lawrie* v. *Woods*, (1920) 2 I. R. 106. Cp. *Mackworth* v. *Hellard*, (1921) 2 K. B. 755, *post*, p. 79). Nor is anything to be deducted because the rent includes a contribution towards cleaning expenses (*Wood (L. M.) & Co., Ltd.* v. *City and West End Properties, Ltd.*, 38 T. L. R. 98). In the case of a public-house a tie (and as a consequence, a discount on the price of goods bought under the tie clause) is irrelevant for purposes of calculating the standard rent (*Brakspeare* v. *Barton*, (1924) 2 K. B. 88). Where a tenant of a house in which he was living at a rent of 19*l.* bought the house in 1908, and resided in it till 1918, when he let it at 34*l.* a year, the standard rent was 19*l.* (*O'Neill* v. *Duncan* (1921), Ir. L. L. T. Rep. 84).

Where a house is sublet in tenements it is not permissible to aggregate the rents of the different subleases for the purpose of obtaining the standard rent of the whole. If the tenant's own rent is less than two-thirds of the rateable value, since this cannot be the standard rent (sub-sect. 7, *infra*), in the absence of evidence of a previous letting at a higher rent, the standard rent is that at which the house is first let after the lease has expired (*Veale* v. *Cabezas*, (1921) W. N. 311). The cases seem to establish that in the absence of evidence to the contrary the latest rent fulfilling the requisite conditions will be presumed to be the standard one (*Bolger* v. *Daly* (1924), 58 Ir. L. T. Rep. 153; *Tarrant* v. *Burston*, "Estates Gazette," May 3rd, 1924. Cp. *M'Kellar* v. *M'Master* (1926), Sc. L. T. Rep. 507).

Where a public-house was, in August, 1914, sub-let as a tied house at a rent of 24*l.* per annum by a tenant who himself held free of any tie at a rent of 130*l.*, it was held on the expiration

of the lease that the standard rent was 24*l.* and not 130*l.* (*Glossop* v. *Ashley*, (1921) 2 K. B. 451, affirmed (1922) 1 K. B. 1). Reference should be made to this case for a discussion of the difficult questions connected with standard rent where there has been a sub-letting. In many cases the standard rent will be obtained by a process of apportionment (sub-sect. (3), *post*, p. 77).

The proviso to this clause contains two separate provisions. Where at the critical date rent was less than the rateable value the rateable value will be the standard rent, even though the rent was not progressive (*Glossop* v. *Ashley*, (1921) 2 K. B. at p. 460).

(b) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

"Standard rent" attaches to the particular property: "standard rate of interest" does not, but may vary with each successive mortgage thereon. It is thought that where there is a covenant to pay at a rate reducible on punctual payment the lower rate is the standard rate.

The application of this provision in the case of a transfer of a mortgage is not very clear. Suppose that a mortgage within the Act was transferred, the mortgagor in the transfer giving a fresh covenant to pay at a higher rate of interest, if all this happens after the critical date, March 25th, 1920 (or as to 1915 Act houses, August 3rd, 1914, or 1919 Act houses, December 25th, 1918), what is the result? Is the existing mortgage a mortgage which was in force on that date, or a mortgage created since that date? The latter, we think, the transfer being only a conveyancing device to effect what is really a new mortgage.

(c) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

Cp. sect. 2, sub-sect. (1) (c) and (d). "Less the amount of such rates," *i.e.*, less the amount actually paid by the landlord

after deducting the commission allowed on compounding. (See judgment of Scrutton, L.J., in *Nicholson* v. *Jackson*, 36 T. L. R. 854, deducing this from the majority decision in the Court of Appeal, which was affirmed on appeal to the Lords. Cp. on this context, *Highfield* v. *Griffin*, *ante*, p. 30.) The principle of *Nicholson* v. *Jackson* appears not to be affected by the Rating and Valuation Act, 1925 (*post*, p. 97). The rates to be deducted are, of course, the 1914 rates, or the rates payable at such other time as regulates the standard rent. On August 3rd, 1914, a house was let at 85*l.* per annum, the tenant paying rates, and part thereof was subsequently let at a rent inclusive of rates. The tenant having obtained an apportionment of 85*l.* under sub-sect. (3) of this section, attributing 2*l.* 10*s.* 6*d.* per month to the portion let to him, it was held that 2*l.* 10*s.* 6*d.* was the net rent of the part let to the applicant. The rent that could be exacted from him had to be calculated by reference to this sum, no deduction being made in respect of rates (*Westcott* v. *Bowes*, C. A. (1925), 41 T. L. R. 332).

It may be noted here that there is in the Act no definition of "rent" *simpliciter*, that expression being in general used in its ordinary signification (restricted, however, to a money rent) (*Hornsby* v. *Maynard*, *ante*, p. 22; see also *ante*, p. 49).

(d) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

See *ante*, pp. 26, 35, for the effect of this last clause.

(e) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

As to Ireland, see sect. 18, *post*, and *Allen* v. *Inspector-General R.I.C.* (1920), 54 Ir. L. T. 119. As to England, it was stated in the eighth edition that rateable value probably means the net rateable value and not the gross value. This view has since been confirmed by *Waller & Son* v. *Thomas*, (1921) 1 K. B. 541.

It is improbable that cases will need to be considered of first assessments after "the date of the first new valuation" under the Rating and Valuation Act, 1925 (*post*, p. 97). Should such a case arise, the rateable value, for purposes of the present clause,

appears to be the rateable value as contemplated by the new rating provisions, which may in the new system sometimes be less than the net annual value.

(f) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

(g) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

The expression "landlord" will thus cover a purchaser. On a sale with vacant possession, if the tenant takes advantage of the Act, it would appear that the purchaser may rescind. (See, however, further, as to purchasers, *ante*, pp. 59, 64.) As to the meaning of "landlord" in the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1), see *post*, p. 124.

Cp. as to "tenant" judgments in *Hylton* v. *Heal*, (1921) 2 K. B. at 445; *Remon* v. *City of London Real Property Co.*, (1921) 1 K. B. 49; *Taylor* v. *Faires*, 37 T. L. R. 55, and note, after sect. 5 (1), proviso 1, *ante*, p. 39. As to the effect of sub-sect. (7) of this section on the meaning of "landlord" and "tenant," see *post*, pp. 85, 124.

The lessee of a mortgagor claims under him and gets the benefit of the Act as against the mortgagee, though the lease be void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332). As to whether "tenant" includes executors (*Collis* v. *Flower* and *Drury* v. *Johnston*, *post*, p. 95) and administrators (*Mellows* v. *Low*, (1923) 1 K. B. 522), see *post*, p. 95. But a bankrupt tenant is not within the Act, for the statu-

tory tenancy vests in the trustee and ceases if the trustee has disclaimed the lease (*Reeves* v. *Davies*, (1921) 2 K. B. 486; *Parkinson* v. *Noel*, (1923) 1 K. B. 117).

A lease to a man "as long as he likes" was in *Barraclough* v. *Taylor* held equivalent to a life estate, so that no increase of rent was possible ("Estates Gazette," 27th January, 1923). The practical result appears to be unaffected by the Law of Property Act, 1925. As to whether "tenant" includes a tenant at will, or a person permitted "service occupation," see *ante*, p. 49.

The concluding words of clause (g) dealing with "tenant" do not cut down the effect of the preceding paragraph (f), and only apply where there being no administrator, paragraph (f) is inapplicable (*Mellows* v. *Low*, (1923) 1 K. B. 522). This is so even where deceased was himself a statutory tenant (*ibid.*).

"Tenant" includes an "assignee" of the original tenancy, but not the assignee of one already a statutory tenant (see *Keeves* v. *Dean; Nunn* v. *Pellegrini* (reported together, (1924) 1 K. B. 685). For the prejudicial effect of assignments, see *ante*, p. 48. "Tenant" will in general include a sub-lessee even where the sub-lease was made by a statutory tenant (*Roe* v. *Russell*, *post*, p. 92). But the Act appears not to protect against ejectment a sub-lessee where the sub-letting was in breach of covenant (*ante*, p. 54). As to sub-leases, see *ante*, p. 54, and *post*, p. 93.

"Member of the tenant's family," see note to sect. 5 (1) (d), *ante*, p. 44. The expression here includes a husband (*Salter* v. *Lask* (No. 2), (1925) 1 K. B. 584).

(h) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65);

These Acts are now repealed and replaced by the Land Registration Act, 1925, without, however, affecting the operation of this clause. (Interpretation Act, 1889, *post*, p. 106.)

(i) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—

(a) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

(b) in Scotland, ninety pounds; and

(c) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bona fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

This sub-section requires careful qualifying by reference to the Rent and Mortgage Interest Restrictions Act, 1923, especially sects. 2 and 10 thereof. Sub-sect. (6) of this section must also be borne in mind.

For information as to the Metropolitan Police District, see Metropolitan Police Guide.

For the purpose of the Act a house may, and in practice often does, consist of a flat or even of a single room (cp. sub-sect. (8), *infra*). On the other hand, the Act will not, as a rule, apply to lodgers, for there is in strictness no letting. The term "lodger," however, is sometimes loosely used to include persons in whom is vested an actual interest in the premises and whom, therefore, the Act would protect. As to furnished dwelling-houses, see *ante*, p. 15.

Where two or more houses or sets of chambers are included in the same tenancy, the combined rent and rateable value must be taken—the Act will not apply simply because the rateable value or apportioned rent of the chambers taken separately is within the specified figures (*Rider* v. *Rollit*, (1920) W. N. 227).

The section provides two independent *criteria*. It will apply (1) if the standard rent does not exceed an amount which varies with the locality, or (2) if the rateable value does not exceed that amount. In other words, to be outside the section both rent and rateable value must be above the stated amount. The amount is treble the corresponding amount under the original Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. For definition of rateable value, see sub-sect. (1) (e).

In general, whether the premises fall within the Act must be tested by the position of the occupying tenant. If the premises are sub-let, it is the sub-tenancy and not the superior tenancy which is the critical factor (see *Glossop* v. *Ashley*, (1922) 1 K. B. 1; *Prout* v. *Hunter*, (1924) 2 K. B. 736). The application of the Act, however, to sub-tenancies is full of difficulty, and has hardly yet been fully explored by the Courts.

It was held (but in reference to mortgages and without much consideration of the position as between landlord and tenant) by Sargant, J., in *Woodifield* v. *Bond* (No. 1), (1921) W. N. 309, that the words "let as a separate dwelling" qualify only "part of a house" and not "house"—though the language of previous judgments suggests the contrary (cp. *Epsom Grand Stand Association, Ltd.* v. *Clarke*, (1919) W. N. 170; *Callaghan* v. *Bristowe*, 36 T. L. R. 841)—and even apart from this, the Act seems calculated to affect only premises which are let (cp. *National Steam Car Co.* v. *Barham, ante*, p. 49). *Woodifield* v. *Bond* is referred to somewhat doubtfully in *Greig* v. *Francis Campion & Co.*, 38 T. L. R. 519, and was not followed in an Irish case on a similar provision of the Free State Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 (No. 19 of 1923) (*Wallace* v. *Fogarty*, (1926) Ir. R. 255). For further discussion of this matter, see the cases on premises including business accommodation, *post*, p. 75. As a consequence of the view taken in *Woodifield* v. *Bond* (*ubi sup.*), it was held that the Act protects a mortgagor, though in personal occupation of the premises and though there has been no previous letting thereof. There is a contrary decision in Ireland (*Re Hegan*, (1921) Ir. R. 189). Possibly in any case the house is not now decontrolled in virtue of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *post*, p. 120.

Houses for the first time affected by the present Act, even if the tenancy expired before the coming into operation of the Act, are, it was suggested in a previous edition, and is now decided, protected (*Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869, and see *Dobson* v. *Richards*, (1919) W. N. 166).

Clause (*i*) *of the proviso.* "Save as otherwise expressly provided," *e.g.*, as to furniture, sects. 9 and 10. There appears to

be no express provision as to lettings including board and attendance.

In *Prout* v. *Hunter*, (1924) 2 K. B. 736, it was held that where premises are sub-let furnished this clause applies, and no protection exists under the Act even though the premises are let unfurnished as between the superior landlord and the original lessee. The test in this respect is the position of the occupying tenant. For further applications of the doctrine of *Prout* v. *Hunter*, see *post*, p. 93.

This clause was held (in *Wood* v. *Wallace*, 65 S. J. 135) to apply only where there is an inclusive rent, *e.g.*, where a flat was let at a given figure with a clause by which tenant was to pay a weekly sum for board, attendance, or use of furniture, this sum was held no part of the rent either for calculation of the amount of the rent or for the purpose of this proviso (*Wood* v. *Wallace*, 65 S. J. 135). Similarly, where a further sum was agreed to be paid payable and receivable as rent (*Hocker* v. *Solomon*, 91 L. J. Ch. 8; *Ellen* v. *Goldstein*, 123 L. T. R. 644). In *Wood* (*L. M.*) *& Co., Ltd.* v. *City and West End Properties, Ltd.*, 38 T. L. R. 98, however, a weekly contribution to cleaning expenses "to be recoverable by distress" was treated as part of the rent for the purposes of calculating standard rent; and the principle of *Wood* v. *Wallace* was doubted by the Court of Appeal in *Wilkes* v. *Goodwin*, (1923) 2 K. B. 86, where the matter is discussed. See also *Rimmer* v. *Carson*, 39 T. L. R. 349; *Crane* v. *Cox*, (1923) W. N. 41. In *Nadler* v. *Wilson* (40 T. L. R. 639), where an addition of 5*s.* per week for attendance on a rent of 74*l.* was to be paid quarterly in one payment, it was held to exclude the premises from the Act. As to furniture, the words are "payments in respect of use of furniture," and cases where the tenant is required to buy will fall not under this section but under sect. 8, *ante*, p. 60, as amended by the Rent and Mortgage Interest Restrictions Act, 1923, s. 9, *post*, p. 134. Furniture (as distinct from fittings and fixtures) suffices to satisfy this proviso if sufficiently substantial in amount to exclude the rule *de minimis* (*Wilkes* v. *Goodwin*, (1923) 2 K. B. 86, where the matter is discussed by the Court of Appeal and reference made to the unreported *Burns-Wallace* v. *Hardingham*). An agreement to let "partially furnished" does not necessarily take the case out of the Act unless the furniture is sufficient in fact for that purpose (*Rimmer* v. *Carson*, 39 T. L. R. 349). A gas cooker, blinds, gas fire, cornice poles and gas brackets are fixtures, not furniture (*Crane* v. *Cox*, (1923) W. N. 41), though linoleum comes under that head. Cases, however, on the quantum of furniture required by this section are not now important, since the Act will apply unless the quantity of furniture satisfies the Rent and Mortgage Interest Restrictions Act, 1923, s. 10, *post*, p. 134.

"Attendance" has been discussed by the Courts in connection with service tenancies of flats in *Nye* v. *Davis*, (1922) 2 K. B. 56; *King* v. *Millen*, (1922) 2 K. B. 247; *Wood* v. *Carwardine*, (1923) 2 K. B. 185; *Dick* v. *Duncan*, (1923) W. N. 90; and *Michael* v. *Phillips*, (1924) 1 K. B. 52. These cases are, since sect. 10 of the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, p. 134), of small practical importance.

Clause (ii) of the proviso is statutory confirmation of *Epsom Grand Stand Association, Limited* v. *Clarke*, 35 T. L. R. 525, where licensed premises used also for residence were held to be within the previous Acts. See the observations in the Court of Appeal in *Hicks* v. *Snooks* ("Estates Gazette," November 24th, 1928), where the Court of Appeal reversed a decision of the Divisional Court excluding from the Act a shop and residence described in the lease as a "shop and messuage." Premises may therefore be a dwelling-house within the meaning of the Act, though part thereof is used for business purposes, and notwithstanding that the protection given to business premises as such by sect. 13 of this Act has now lapsed. Whether premises comprising business and shop accommodation fall within the Act in virtue of this sub-section appears to depend on the purpose for which they were let, and not the actual user or intrinsic character of the premises. "The important matter is the rights under the lease, not the *de facto* user" (per Scrutton, L. J., in *Barret* v. *Hardy Brothers (Alnwick), Ltd.*, (1925) 2 K. B. at p. 227). "If an agreement were to let premises as a barn, the tenant though he lived there could not be heard to say that they were let as a dwelling-house," per Bankes, L. J., in *Epsom Grand Stand Association* v. *Clarke*, as reported (1924) W. N. 170. It would appear to follow (though no actual decision goes quite so far) that if a barn were let expressly for use as a residence it would fall within the protection of the Act. According to Greer, J., in *Gidden* v. *Mills* ((1925) 2 K. B. 713, at p. 727), where premises are let without any prohibition as to user so that they may be used in any lawful way, the nature of the actual user at the time of the proceedings must determine whether the premises fall within the Act or not. The general principle established by the *Epsom Case*, which was decided on the Act of 1915, has been adopted by later decisions on the similar language of the present Act, and appears firmly established, even if it is perhaps hardly consistent with *Woodifield* v. *Bond* (No. 1) (*ante*, p. 72), where the words of this sub-section, "let as a separate dwelling," were held to qualify only "part of a house" and not "house."

Whether, then, the Act applies will depend on the terms of the letting, and it seems that the Act will be applicable if the letting is for the purpose of residence even in a minor degree and though the dominant purpose of the letting is for use as

business premises. This view was taken in *Waller & Son, Ltd.* v. *Thomas*, (1921) 1 K. B. 541, where McCardie, J., in spite of a personal preference for dominant user, felt himself bound by the Court of Appeal decision in the *Epsom Case*. To a similar effect is the judgment of the same judge in *Brakspeare* v. *Barton*, (1924) 2 K. B. 88. Dominant user was also rejected in *Cohen* v. *Benjamin*, 39 T. L. R. 10. In some cases language consistent with "dominant purpose" has been used (*Callaghan* v. *Bristowe*, 36 T. L. R. 841; *Greig* v. *Francis Campion & Co.*, 39 T. L. R. 519), but apparently without intentionally questioning the rule as formulated in the *Epsom Case*. On the other hand, there is much to be said on juristic grounds for "dominant purpose" of the letting, and it is perhaps open to the Court of Appeal to reconsider the point.

The matter has sometimes been discussed on the question whether premises admittedly originally within the Act as a dwelling-house have been taken out of control by a change in status making the premises business premises (cp. further, p. 80, para. 3). In *Phillips* v. *Barrett*, (1922) 1 K. B. 222, a dwelling-house, structurally reconstructed into a factory and let as such, was held no longer within the Act. And a conversion into business premises may equally result from a mere letting for that purpose without structural alteration (*Williams* v. *Perry*, (1924) 1 K. B. 936). Somewhat similarly, where the tenancy of a combined shop and residence falling within the Act terminated, and there was a reletting of the shop and dwelling-house separately, it was held that the Act no longer applied to protect the shop (*Phillips* v. *Hallahan*, (1925) 1 K. B. 756). In this class of case, on principle it would appear that the premises would not be taken out of the Act by mere user without a new letting, express or implied, on fresh terms. In *Hyman* v. *Steward* ((1925) 2 K. B. 702, with which cp. *Sanderson* v. *Gibbons, infra*), where premises originally let and used for residential purposes had latterly not been used or only used to a trivial extent for residence, it was held that the premises were still within the Act. Salter, J., doubted whether the tenant's use or disuse of the premises without the landlord's knowledge or consent could take a house out of the Act or bring one within it (cp. *Butcher* v. *Murray, infra*), and thought that at any rate only complete and unmistakeable change of user (which on the facts there was not) could have this effect. Greer, J., agreed that there was no sufficient evidence of change of user, but treated it as an open question whether the terms of the tenancy or the actual user by the tenant were the vital factor. In *Gidden* v. *Mills*, (1925) 2 K. B. 713, where the tenant of premises within the Act, consisting of a house and garage, let the rest of the premises to a sub-tenant, retaining the garage in his own possession, it was held that the garage ceased to be within the Act (though the sub-tenant was still protected as to the residue). Whether this decision can be reconciled with other cases is perhaps doubtful.

The following have been held within the Act:—Public-houses (*Epsom Grand Stand Association* v. *Clarke*, (1919) W. N. 170; *Waller & Son* v. *Thomas*, (1921) 1 K. B. 541; *Brakspeare & Sons, Ltd.* v. *Barton*, 40 T. L. R. 607); house with shop attached (*Greig* v. *Francis Campion & Co., Ltd.*, 38 T. L. R. 519; *Cohen* v. *Benjamin*, 39 T. L. R. 10; *Hicks* v. *Snooks*, "Estates Gazette," Nov. 24th, 1928); garage with living accommodation over (*Callaghan* v. *Bristow*, (1920) W. N. 308; cp., however, *Gidden* v. *Mills, ubi sup.*); temperance hotel (*Burns* v. *Radcliffe*, (1923) 2 Ir. R. 158); house used for letting to lodgers (*Colls* v. *Parnham*, (1922) 1 K. B. 325 (*Tompkins* v. *Rogers*, (1921) 2 K. B. 94, and *Earle* v. *Bradley*, "Estates Gazette," Oct., 1921, p. 325, cannot be relied on as showing the contrary, since the criticisms of *Tompkins* v. *Rogers* in other cases; see also *Crankshaw* v. *Donelly*, "Estates Gazette," Dec. 26th, 1925)); premises where during the greater part of the contractual term the tenant had not been in substantial occupation, but had used the premises for the sole purpose of subletting the ground floor furnished and the basement unfurnished to separate tenants (*Ebner* v. *Lascelles*, (1928) 1 K. B. 486); premises used for sleeping accommodation of an hotel staff (*Duke of Richmond* v. *Dewar and Cadogan Hotel Co., Ltd.*, 38 T. L. R. 151); premises let to a local authority with residence for surveyor (*West* v. *Wrotham U.D.C.*, "Estates Gazette," Oct. 20th, 1923); premises let as a dwelling-house, but user for residence in fact abandoned and premises used for storage (*Sanderson* v. *Gibbons*, "Estates Gazette," Nov. 8th, 1924, and see *Hyman* v. *Steward, ante*, p. 75); a fried fish shop (*Edwards* v. *Rimmer*, "Estates Gazette," Oct. 17th, 1925).

Cases held not within the protection of the Act are:—Premises expressly let for business purposes, but in breach of contract used for residence (*Williams* v. *Perry*, (1924) 1 K. B. 936; *Cook Bros.* v. *Rogers*, "Estates Gazette," Aug. 4th, 1923; *Smith* v. *Barnett*, "Estates Gazette," March 29th, 1924); premises originally business premises, but subsequently during the tenancy used for residence (*Butcher* v. *Murray*, "Estates Gazette," July 31st, 1926, where Fraser, J., doubted whether there could be a change of status in the premises either in favour of landlord or tenant without the consent of both parties); premises let for a political club (*Gardiner & Co.* v. *Deptford Liberal Club*, "Estates Gazette," March 1st 1924); property let to the Receiver of the Constabulary Force in Ireland for constabulary barracks (*Martin Estates Co., Ltd.* v. *Watt* (1925), N. I. 79). And County Court decisions that a shop with bedroom overhead and stables with rooms overhead were not within the Act were upheld on appeal on the ground that there was evidence to support the finding of fact (*Hutton* v. *Coombes*, and *Oatway* v. *Munday*, both "Estates Gazette," March 22nd, 1924). A similar decision as to a nursing home is *Lewis* v. *Weston* ("Estates Gazette," July 5th,

1924). See also the following cases given in fuller detail above, where property within the Act has been taken outside the Act by letting for business premises:—*Williams* v. *Perry, Phillips* v. *Hallahan, Gidden* v. *Mills* (*ante*, p. 75).

There may be a trade or business, though those carrying it on make no profit (*Re Law Reporting Council*, 22 Q. B. D. 279). In case of a combined let of a house with shop and fixtures, the Act provides no machinery by which the landlord can be given possession of the latter, and the rent be apportioned (*Ellen* v. *Goldstein*, (1920) W. N. 253; cp. *Salter* v. *Lask* (No. 1), (1924) 1 K. B. 754; contrast also *Gidden* v. *Mills*, (1925) 2 K. B. 713, *post*, p. 81).

Clause (iii) of the proviso was new in this Act, and such cases as *Scott* v. *Austin*, (1919) W. N. 85, decided on the earlier Acts, have consequently now no application.

"Land other than the site of the house" is to be read literally, and will include land conveniently enjoyed with the house, or possibly even the curtilage (*Early* v. *Drummond*, 39 T. L. R. 171). The words refer only to premises not protected by the Act. Hence where the letting included both a dwelling-house and business premises falling within sect. 13, the Act applied even though the rateable value of the business premises was not less than a quarter of that of the house (*Read* v. *Goater*, (1921) 1 K. B. 611). Sect. 13 no longer operates, but having regard to sub-sect. (6), *post*, it is doubtful whether this affects the position. See also this proviso discussed in *Wellesley* v. *White*, (1921) 2 K. B. 204, where a house falling within the land was relet with other land the rateable value of which was more than one-quarter that of the house, the Act did not protect the composite subject-matter of this second letting (*Haldane* v. *Sinclair*, (1927) S. C. 562). Sub-sect. (6) of this section was not applicable. For definition of rateable value, see *ante*, p. 68.

Land may be let with the house within the meaning of this provision though the lease allocates separate rents to house and to land (*Falconer* v. *Chisholm's Trustees* (1925), Sc. L. R. 742).

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

Cp. sect. 2 (6). The words "final and conclusive" take away any right of appeal as to amount (*Lyon* v. *Morris*, 19 Q. B. D. 139), though apparently the right of appeal is only limited in accordance with *Strickland* v. *Palmer* (*ante*, p. 32). On appeal to the County Court judge from the Registrar's order made on an application for apportionment, the judge can go behind the Registrar's order, and must consider the evidence and deal with the matter himself (*Gregson* v. *Prior*, (1925) W. N. 247).

The Court must apportion in every case falling within this sub-section, whether any separate question arises or not (*R.* v. *Marylebone County Court Judge*, (1923) 1 K. B. 365, distinguishing *Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311). The applicant satisfies the onus of proof on him to show that the section is applicable if he shows that the whole house was included in one letting on 3rd August, 1914 (*Platman* v. *Frohman*, 166 L. T. News. 469). The apportionment operates retrospectively, and overpayments made even before apportionment are recoverable (subject to the time limit under the Rent and Mortgage Interest Restrictions Act, 1923, s. 8) (*Kimm* v. *Cohen*, 40 T. L. R. 123). Whether an apportionment obtained against a lessor who has bought the reversion is binding as against the former lessor so as to enable over-payment to be recovered from him is a point on which a Divisional Court differed (*Wedgwood* v. *Heddersley*, "Estates Gazette," May 5th, 1923, *pro* Salter, J.: *contra*, Lush, J.). In making the apportionment the Court must consider only the comparative size, accessibility, aspect and other physical advantages enjoyed by the position of the premises let to the applicant; but not that the landlord pays the rates or provides gas, water, telephone or other amenities (*Bainbridge* v. *Congdon*, (1925) 2 K. B. 261).

The practical application of this difficult sub-section may be illustrated as follows:—

Suppose a house was at August 4th, 1914, let by A. to B. at a rent of x*l.* (being an amount sufficient to bring the house within the Act), and B. sub-lets the ground floor to C. The standard rent of the ground floor is a fraction of x*l.* obtained by apportionment. (Similarly, if B. surrendered his tenancy, and A. relet the house not as a whole, but piecemeal, the ground floor to D. and the other floors to E., the standard rents regulating the amounts which could be exacted from D. and E. respectively were also formerly fractions of x*l.*, as will still be the case where the leases to D. and E. were made before 31st July, 1923, though otherwise the surrender of the tenancy by B. will result in the premises being decontrolled (Rent and Mortgage Interest Restrictions Act, 1923, s. 2).) This is established by *Woodward* v. *Samuels*, (1920) W. N. 82. The principle is that A. cannot get more by letting the house piecemeal than he could have obtained by letting it as a whole. But if the house as a whole

had never been let, it will have no standard rent to apportion (*Valentine* v. *Corbetti*, "Estates Gazette," April 5th, 1924). Similarly, where the house has never been let except at a rent less than two-thirds its rateable value, since by sub-sect. (7) of this section such a tenancy is for the purpose of the Act treated as a non-existent one (*Joy* v. *Epner*, (1925) 1 K. B. 362).

This is the position in the comparatively simple case where on a letting of premises comprised within a larger unit, itself "controlled" by the Act, a proportion of the standard rent of the whole is attributed to the part. But apportionment is also possible though the comprising premises are not themselves within the Act, whether because they are not a dwelling-house or owing to considerations as to rent and rateable value.

Where A. let a house to B., who sub-let the ground floor to C., but the house let to B. did not itself fall within the Acts, C. is nevertheless entitled to have an apportionment made in order to ascertain whether the standard rent attributed to the ground floor is such as to make the ground floor itself "controlled" (*Sinclair* v. *Powell*, (1922) 1 K. B. 393; *Woodhead* v. *Putnam*, (1923) 1 K. B. 252; *Barrett and Evans* v. *Hardy Brothers (Alnwick), Ltd.*, (1925) 2 K. B. 220; *Phillips* v. *Potter* (1925), 41 T. L. R. 460; *Joy* v. *Epner*, (1925) 1 K. B. 362.) "It is not necessary that the 'property' in which the dwelling-house of the applicant for apportionment is 'comprised' should itself be a dwelling-house or be subject to the Act." (Judgment of a Divisional Court in *Woodhead* v. *Putnam, ubi sup.*, approved by the C. A. in *Barrett and Evans* v. *Hardy Brothers (Alnwick), Ltd.*, (1925) 2 K. B. 220.) The sub-section is to be read as meaning "where in order to determine the standard rent or rateable value of a dwelling-house for the purposes of seeing whether the Acts apply to it, it is necessary to apportion, &c." (Judgment of Scrutton, L. J., in *Barrett and Evans* v. *Hardy Brothers, ubi sup.*) The principle applies not only to apportionment of rent, but of rateable value (*Barrett and Evans* v. *Hardy Brothers (Alnwick), Ltd., ubi sup.*).

The general position is well illustrated by the last-mentioned case. A flat on the second floor of a house in Pall Mall (the rateable value of which house immensely exceeded the figure necessary to bring it within the Acts) was let in 1917 as a dwelling-house and subsequently again so let in 1922. Previously to 1917, the flat had been let for business purposes only. Since before August, 1914, the rent of the flat had never been less than 150*l.* (a figure well beyond the amount required to bring the flat within the Act on the score of rent). The tenant of the flat was held entitled to have the rateable value of the house apportioned, and as in the result the rateable value attributable to the flat (as in 1917, when it was first let as a dwelling-house) was under 105*l.*,

the flat was brought within the protection of the Act on the score of rateable value.

Two points of subsidiary but considerable practical importance also established by *Barrett* v. *Hardy Brothers (Alnwick), Ltd.*, are:—

(1) The date at which to apportion is not necessarily August, 1914—it may be the later date at which the part of the premises in respect of which apportionment is sought was first let as a dwelling-house.

(2) Where different portions of the entire premises were separately assessed at the actual date, apportionment is made by reference to the assessment of that portion of the premises which includes the part let to the applicant. Thus, in *Barrett* v. *Hardy Bros. (Alnwick), Ltd.*, there were separate assessments of the basement, of the first floor, and yet a third assessment of the second, third, fourth and fifth floors. On application by the tenant of the second floor flat, the Court of Appeal thought that apportionment could properly be made by reference to the third assessment.

Cases in which there is no apportionment are:—

(1) Decontrolled premises (*post*, p. 120), which are outside the Act, including this sub-section of it.

(2) Where the case falls within sect. 12 (9), *infra*, p. 85. If before reletting A reconstructed the house into flats in accordance with that subsection, the reconstructed flats ceased to be within the Act and have no standard rent. But if the reconstruction does not affect the entire premises, the unaffected parts remain within the Act and may be the subject of apportionment (*Abrahart* v. *Webster* (*post*, p. 86)).

(3) Apart from a reconstruction falling within sect. 12 (9), there may have been such a reconstruction before the reletting, as was yet sufficient to make the entire house new premises possessing no identity with the original premises. Thus, where a dwelling-house was converted into a factory, identity was lost and the premises taken out of the sub-section (*Phillips* v. *Barnett*, (1922) 1 K. B. 222). Nor need the reconstruction be so radical in character as in *Phillips* v. *Barnett*. If the reconstruction is into flats, similarly it may, though not falling within sect. 12 (9), make the resulting flats new dwelling-houses attracting their own standard rent on the first occasion of their reletting after reconstruction (*Marchbank* v. *Campbell*, (1922) W. N. 139; *Sinclair* v. *Powell*, as dealt with in the Court of Appeal, (1922) 1 K. B. 393; see also *Darrell* v. *Whitaker*, (1923) W. N. 165; and *Sutton* v. *Begley*, (1923) 2 K. B. 694). This may be so as regards, *e.g.*,

the first floor, though the reconstruction of the entire house was, as regards the first floor, only trivial and the first floor benefited only indirectly (*Stockham* v. *Easton*, (1924) 1 K. B. 52. Contrast *Abrahart* v. *Webster*, *supra*, where it is pointed out that *Stockham* v. *Easton* concerns only the exception now under discussion, and does not apply to exception (2), *supra*. And, without any structural alteration, the identity of the original dwelling-house may be lost, and the premises consequently taken out of the Act (including this sub-section of it) if the premises are let for business purposes or otherwise let in such fashion (*e.g.*, furnished) that the premises no longer fall within the definition of dwelling-house to which this Act applies. (See hereon the following cases:—*Williams* v. *Perry* (*ante*, p. 75), *Phillips* v. *Hallahan* (*ante*, p. 75), *Hyman* v. *Steward* (*ante*, p. 75), *Gidden* v. *Mills* (*ante*, p. 75), *Prout* v. *Hunter* (*ante*, p. 73: see especially in this case observations of Scrutton, L. J., at p. 743), *Leslie & Co., Ltd.* v. *Cummings* (*post*, p. 94), *Spurling* v. *Pugh* (*post*, p. 94).) According to *Gidden* v. *Mills*, where by conversion of part of the premises into business or furnished premises the tenant has lost the protection of the Act, possession may be ordered in respect of that part, leaving the tenant statutory tenant of the rest of the premises. In such cases (assuming the decision is right, see *ante*, p. 75), presumably the tenant can claim apportionment of rent.

(4) It has been held by a Divisional Court that where the owner was himself occupying part of a dwelling-house in August, 1914, having let the residue, no apportionment could be claimed by the tenant to whom is subsequently let the part formerly occupied by the owner (*Lelyveld* v. *Peppercorn*, (1924) 2 K. B. 638). This decision, however, appears difficult to reconcile with the other cases above cited, and has been doubted in the Court of Appeal (*Barrett* v. *Hardy Brothers* (*Alnwick*), *Ltd.*, (1925) 2 K. B. 220); *Simpson* v. *Zubrasky*, "Estates Gazette," July 22nd and Dec. 16th, 1922, appears to be a case on the same lines as *Lelyveld* v. *Peppercorn*, though it is not easy from available material to be sure of this.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(b) to an equitable charge by deposit of title deeds or otherwise; or

(c) to any mortgage which is created after the passing of this Act.

"After the passing of this Act," viz., 2nd July, 1920. This sub-section (which repeats with the addition of (c) sect. 2, sub-sect. (4), of the Increase of Rent (War Restrictions) Act, 1915) must be read in conjunction with sub-sect. (2), *supra*. A mortgage of a farm, for instance, is not necessarily brought within the Acts by the fact that the rateable value of the house and buildings is not less than one-tenth of the rateable value of the whole land comprised in the mortgage; for the letting includes the land, and the rateable value of the land will probably not be less than a quarter of the rateable value of the farm house (*ante*, p. 71).

Subject to clause (a), the Act applies to a mortgage of two houses one of which is within the Act and the other not (*Re Dunn's Application*, 149 L. T. Newspaper, 215). But see sub-sect. (5), *infra*. It is thought the Act would apply to a sub-mortgage.

As regards equitable charges, it has been held by Sargant, J., in *Jones* v. *Woodward*, (1917) W. N. 61, that the words "or otherwise" are not *ejusdem generis*, but are equivalent to "by some other process than the deposit of deeds"; so that an equitable charge which is created by writing, without any deposit of title deeds, is within the exception and outside the Acts. The meaning of "equitable charge" was very fully discussed in *London County and Westminster Bank, Ltd.* v. *Tompkins* ((1918) 1 K. B. 515). Tompkins deposited with the plaintiff bank the title deeds of certain small dwelling-houses, and executing a deed in which he undertook to pay on demand the moneys that should for the time being be due from him to the bank, and charging therewith his interest in the property comprised in the deeds with payment of the said moneys on demand, he declared that the bank should be deemed mortgagees, and undertook on request to execute a legal or other mortgage of the premises; he declared that during the continuance of the security he would hold the property charged in trust for the bank, with power to the bank to appoint new trustees in his place, and to vest all his said estate and interest in such new trustees; and he irrevocably appointed certain officials of the bank his attorneys for executing a conveyance of his estate and interest in the premises. The Court of Appeal held, in an action by the bank to recover the amount due to them, that the document was an "equitable charge," and therefore outside sect. 2 (4) of the Act of 1915 (reproduced with an immaterial addition by this sub-section), so that the action was maintainable.

A second, third, or subsequent mortgage appears to be within the Act even apart from the fact that since the Law of Property Act, 1925, such mortgages are legal mortgages. This view finds support from the wording of sect. 7, which contemplates that the Act may in some cases apply to a mortgagor who is liable to pay interest under a prior incumbrance.

As to the case of mortgagors in possession and the effect of decontrol, see *ante*, p. 58; *post*, p. 128.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

This provision has probably in practice rarely been taken advantage of.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

This involves the principle that "once within the Act always within the Act." But the decisions have given a minimising

construction to this sub-section, and cases where it will operate appear to be rare. Thus it does not apply where structural reconstruction of the premises results in substantially new premises (*Phillips* v. *Barnett*, (1922) 1 K. B. 222, and other cases cited *ante*, p. 80), nor where a house, originally a dwelling-house, is converted into business premises without structural alteration in virtue of fresh terms of tenancy (*Williams* v. *Perry*, (1924) 1 K. B. 936, *ante*, p. 75), nor to cases where the house is taken out of the Act by being let furnished (*Prout* v. *Hunter*, (1924) 2 K. B. 736), and the sub-section must now be read subject to the decontrol provisions under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *post*, p. 120. See also on this section the observations in *Phillips* v. *Hallahan*, (1925) 1 K. B. 756.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

For purposes of this calculation, the actual rent must be taken free from deduction for rates and taxes, even if the landlord has agreed to pay them (*Mackworth* v. *Hellard*, (1921) 2 K. B. 755, where the history of this provision, which repeats sect. 2 (6) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by sect. 7 of the Courts (Emergency Powers) Act, 1917, is discussed). The net and not the gross rateable value is to be taken (*Waller & Son* v. *Thomas*, (1921) 1 K. B. 541). Under this sub-section (subject now to the decontrol provisions of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2), if at the expiration of a tenancy where the rent is less than two-thirds of the rateable value, the rent is raised up to or above the two-thirds, the Act will become applicable, and the new rent will be subject to the limitations imposed by it, *i.e.*, will itself constitute the standard rent unless there was a pre-1914 letting by which calculation can be made. See further as to the effect of this sub-section, *post*, p. 123.

One result will be that usually the ground landlord will be able to increase his "ground rent" if the property has appreciated in value when the lease falls in (cp. *Veale* v. *Cabezas* (1921), W. N. 311), but is not protected by this Act as against his mortgagee.

And since tenancies falling within this sub-section are to be treated as non-existent for the purposes of the Act, a tenant at

a ground rent will usually, *vis à vis* his tenants, be in the position of freeholder (*Finney* v. *Goulgoltz*, *Brooks* v. *Liffen*, *Lloyd* v. *Cook*, *post*, pp. 125, 123, 127; *Joy* v. *Epner*, *ante*, p. 79).

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

The object of this clause is obscure. Its effect is, no doubt, that where a tenant takes one or two rooms in a house for the purpose of dwelling in them the tenancy of the rooms will be within the Act. But since the rooms were surely, apart from this clause, "a part of a house" within sect. 12, sub-sect. (2) of the present Act, this clause appears to do no more than repeat the existing rule.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

(a) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. 5, c. 35), applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(b) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

Houses erected after or in course of erection at the date of the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (2nd April, 1919), enjoyed under sect. 8 of that Act an immunity continued by the present Act.

In *Smith* v. *Prime*, (1923) W. N. 131, Roche, J., held that "separate" means "distinct," not necessarily physically separated or partitioned off, and that "self-contained" means that the flat is within an ambit or circle and not scattered. It would not be a self-contained flat where rooms scattered about the house are let, though the mere fact that some accessory parts, such as the cellar and accommodation for servants, are outside the ambit of the flat, will not prevent its being self-contained. In *Darrell* v. *Whitaker*, (1923) W. N. 165, also it was held that there was no need for physical separation, and self-contained was said (by Lush, J.) to mean a complete residence containing all that is reasonably necessary for residents, and by McCardie, J., to mean "self-sufficient." There may be a reconstruction within the section even though it be a breach of building regulations (*Jones* v. *Ramuz*, "Estates Gazette," December 16th, 1922).

In *Woodward* v. *Samuels* ((1920) W. N. 82), under the former Acts it was held that if the house to which the Acts applied was converted into flats, the original standard rent had to be apportioned among the flats. In *Abrahart* v. *Webster*, (1924) 2 K. B. 342, a Divisional Court held that the reconstruction referred to is that of the actual dwelling-house, not of the notional dwelling-house constituted, *e.g.*, by the first floor where separately let, and that a reconstruction under which the first floor is not even indirectly benefited might prevent the tenant thereof from claiming apportionment under sub-sect. (3) of this section, but this decision was overruled on appeal (*Abrahart* v. *Webster*, (1925) 1 K. B. 563). Where, therefore, the reconstruction takes the shape of, *e.g.*, adding a third floor, the third floor will under this subsection be outside the Act, but the Act will continue to apply to the lower floors. A reconstruction not within this section may sometimes prevent apportionment (see *ante*, p. 80).

The provision as to rating appears to elude the repealing provisions of the Rating and Valuation Act, 1925, s. 69 (1). Cp. sect. 64 (1) of that Act.

As to the rates payable in respect of converted houses, see sect. 92 (1) (c) of the Housing Act, 1925. Sect. 7 of the Housing, Town Planning, &c. Act, 1919, referred to in this subsection is not repealed by the Housing Act, 1925.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

13. *Application to business premises.*—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications:—

(a) The following paragraph shall be substituted for paragraph (c) of subsection (1) of section 2:

"(c) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent":

(b) The following paragraph shall be substituted for paragraph (d) of subsection (1) of section five:

"(d) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available":

(c) The following paragraph shall be added after paragraph (g) of the same subsection:

"(h) The premises are bona fide required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest":

(d) Paragraph (i) of the same subsection shall not apply:

(e) Sections nine and ten shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.

This clause has now ceased to operate, though its original inclusion in the Act may in some cases conceivably affect the construction of other sections. Probably it did not affect any premises already within sect. 12 (see 39 "Law Notes," 258, and *Read* v. *Goater*, (1921) 1 K. B. 611; but see also *Duke of Richmond and Gordon* v. *Dewar and Cadogan Hotel Co., Ltd.*, (1921) W. N. 356). Cp. also *Laird* v. *Graves* (1921), I. L. T. Rep. 55; *McQuillan* v. *Clinton* (1921), I. L. T. Rep. 143; *Roberts* v. *Collyer*, "Estates Gazette," Feb. 3rd, 1923.

Business premises let at a rent including the use of furniture were outside the section (*Necchi* v. *Cranchi*, 37 T. L. R. 934).

On clause (c) of sub-sect. (1), see *Mitchell* v. *Townend*, (1921) 2 K. B. 91.

GENERAL.

14. *Recovery of sums made irrecoverable, &c.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

Under the earlier Acts it was held that overpayments of the sort in question, made under a mistake of law, were irrecoverable. (*Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 771.) Amounts so overpaid are not a fine, premium, or other like sum within sect. 8 (1) (*ibid.*). Then sect. 5 of the Courts (Emergency Powers) Act, 1917, made the payment recoverable within a period of six months. The present Act removed this time limit, but it was reinstated by the Rent and Mortgage Interest Restrictions Act, 1923 (*post*, p. 133).

Where there has been no change of landlord, the tenant may deduct the amount overpaid from his rent or interest. If there has been a change of landlord, while he can sue the former landlord or his executor or administrator for the amount, it is not

clear that he could deduct from his rent as against the existing landlord overpayments made to the former landlord. It was apparently assumed in *Hacker* v. *Grieg* ("Estates Gazette," June 24th, 1924) that he could not, and so decided in the Irish case of *Murray* v. *Webb* (1925), 59 I. L. T. 51. (See also *Wedgwood* v. *Heddersley*, *ante*, p. 78.) Similar considerations apply where a mortgage has been transferred. The omission of the words "or his legal personal representative" after the word "mortgagee" at the end of the section is curious, but the definitions of "landlord" and "mortgagee" (*ante*, p. 69) include their personal representatives.

As to recovery of overpayments only subsequently ascertained so to be in virtue of apportionment under sect. 12 (3), see *Kimm* v. *Cohen*, *ante*, p. 78. The right of deduction may be relied on even though the tenant was at the date of his failure to pay the rent in full unaware that the right existed (*Catling* v. *Sowden*, "Estates Gazette," 27th Dec. 1924).

For a case where the remedy under this sub-section is barred, see sect. 8 (2) of this Act.

(2) If—

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or

(b) Where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

This is intended to put a stop to the unscrupulous practice of entering up an irrecoverable increase of rent in the rent-book as "arrears," falsely asserted (in the face of the proviso to sect. 19 (2) of this Act) to be payable when the Acts cease to operate.

In this context reference may be made to the Housing Act, 1925, s. 5 (re-enacting with slight modifications the Housing, Town Planning, &c. Act, 1919, s. 29), which provides that "in

the case of houses intended or used for occupation by the working classes, the name and address of the medical officer of health for the district and of the landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation shall be inscribed in every rent book, or, where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy and before any rent is demanded or collected, and where there has been any failure to comply with the provisions of this section in respect of any house any person who demands or collects any rent of the dwelling-house shall be liable, on summary conviction, to a fine not exceeding 40*s*." Failure to comply with the requirements under sect. 5 of the Housing Act, 1925, does not prevent the rent being recovered or prevent its being lawfully due within sect. 5 (1) of this Act (*Narraway* v. *Bolster*, "Estates Gazette," July 19th, 1924).

Reference should also be made to the Statement of Rates Act, 1919 (9 & 10 Geo. V. c. 31), which does not extend to Scotland or Ireland, though similar provisions are contained in sect. 3 of the Houseletting and Rating (Scotland) Act, 1920. It provides by sect. 1 (1), from and after January 1st, 1920, every document containing a demand for rent or receipt for rent, which includes any sum for rates paid or payable under any statutory enactment by the owner instead of the occupier, shall state either the annual, half yearly, quarterly, monthly, or weekly amount of such rates paid or payable in accordance with the last demands received by the owner from the rating authorities at the time of making his demand or giving his receipt in respect of the hereditament in question: Provided that, where such a statement as is required by this section has been furnished in connection with a demand for rent or receipt for rent in respect of a particular period, it shall not be necessary to furnish the statement upon any subsequent demand for rent or receipt for rent in respect of that period.

By sub-sect. (2) this Act shall not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute.

Sect. 2 defines "demand for rent" and "receipt for rent" to include a rent book, rent card, and any document used for the notification or collection of rent due or for the acknowledgment of the receipt of the same; and by sect. 3, if any person makes a demand for rent or gives a receipt for rent in contravention of this Act, he shall, in respect of each offence, be liable, on summary conviction, to a fine not exceeding 40*s*.

15. *Conditions of statutory tenancy.*—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he

retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

This creates what (following the marginal note to the section) has conveniently come to be known as the "statutory tenancy," and defines the position of a tenant holding over under the Act, who is given what has been described as a "status of irremovability" (*Keeves* v. *Dean*, (1924) 1 K. B. 685; *Ebner* v. *Lascelles*, (1928) 2 K. B. 486). The nature of the statutory tenancy is of some difficulty. For a discussion, see *Remon* v. *London Real Property Co.*, (1921) 1 K. B. 49; *Keeves* v. *Dean*, (1924) 1 K. B. 685; *Ebner* v. *Lascelles*, (1928) 2 K. B. 486; and *Roe* v. *Russell*, (1928) 2 K. B. 117.

It remains to some extent doubtful whether the statutory tenancy is more than a purely personal right and the extent to which all the incidents of the original tenancy are included. The matter is important as to, *e.g.*, fixtures, and it is submitted the position of the tenant as to removal of fixtures would (except as to compensation under the Landlord and Tenant Act, 1927) be the same as under the original tenancy. His position as to recovering damages for breach of the lessors' repairing covenant is certainly so (*Hewitt* v. *Rowlands*, (1924) W. N. 196). An option for renewal contained in the lease, though it is not a term of the tenancy within the meaning of the section, can nevertheless, on grounds independent of the section, be exercised by a statutory tenant unless he has expressly waived his right (*McIlroy* (*William*), *Ltd.* v. *Clements*, (1923) W. N. 149; cp. *Bradbury* v. *Grimble & Co., Ltd.*, (1920) 2 Ch. 548, and *Rider* v. *Ford*, (1923) 1 Ch. 541). The position is the same as to options of purchase, subject to questions as to whether such options do not offend the perpetuity rule. (See the point discussed in the cases last cited, and Article, 44 Law Notes, p. 53.) It is thought that a statutory tenant would not be entitled to compensation under Part I. of the Landlord and Tenant

Act, 1927. (See The Landlord and Tenant Act, 1927, by the Editors of "Law Notes" (uniform with the present volume), pp. 80 *et seq.*) He is only subject to liabilities accruing during his own statutory tenancy, so that where a daughter residing with her father on his death became statutory tenant (under sect. 12 (1) (g) of the principal Act), she was not personally liable for arrears of rent due from the deceased. Nor was non-payment thereof a ground of ejectment against her (*Tickner* v. *Clifton*, (1928) W. N. 270).

The notice required to be given by a statutory tenant before giving up possession is defined by the section. Thus, a tenant from year to year who, after notice to quit, takes advantage of the Act, must give the same notice, viz., half a year's notice, as if the original tenancy had continued uninterruptedly. Whether this notice can be given to expire at any time or whether it must be for the end of a current year of the tenancy is not clear.

It seems that no notice is required by the landlord, who can terminate the statutory tenancy at any time (*Shuter* v. *Hersh*, (1922) 1 K. B. 431; *Aston* v. *Smith*, (1924) 2 K. B. 143; and see *Remon* v. *London Real Property Co.*, (1921) 1 K. B. 49, at p. 57), but only by obtaining an order for possession if sect. 5 of the Act so permits. The landlord is, however, prevented by the Act from re-entry without an order, even where the circumstances are such as to entitle him to an order for possession under sect. 5 (*Cruise* v. *Terrell*, (1922) 1 K. B. 664). Apparently the statutory tenancy will expire *ipso facto* without notice on the Act ceasing to operate. And the statutory tenancy was determined where the tenant agreed to purchase the freehold, being allowed by the contract to retain occupation until completion and pay interest on the purchase-money meantime (*Turner* v. *Watts*, 44 T. L. R. 105).

The statutory tenancy is not capable of voluntary assignment *inter vivos* (*Keeves* v. *Dean*, *Nunn* v. *Pellegrini*, reported together, (1924) 1 K. B. 685). A tenant, however, who by apportionment under sect. 12 (3) obtains a reduction of his contractual rent as being in excess of that permitted by the Act, does not thereby become a statutory tenant, and may assign the term vested in him (*Fumasoli* v. *Comyn and Fish* (1924), 132 L. T. R. 490).

In *Roe* v. *Russell* ((1928) 2 K. B. 117, overruling *Wheeler* v. *Smith*, "Estates Gazette," 29th May, 1926), it was held by the Court of Appeal that a statutory tenant can sub-let part of the premises provided the sub-letting is not forbidden by the terms of the contractual tenancy on which the statutory tenancy was founded (*Roe* v. *Russell*, *ubi sup.*, at pp. 138, 141). But a statutory tenant cannot sub-let the whole, nor can he by a series of sub-lettings part with the whole of the premises (*ibid.* p. 130). Where the tenant has entered into such a series of sub-lettings, apparently he himself would no longer

be protected, though whether in such a case the sub-tenants would be protected by the Act was left open. So far as the objection to such a series of sub-lettings is based on sect. 5 (1) (h) (*ante*, p. 48), since fulfilment of the conditions of that clause is only ground for ejectment if accompanied by the further condition of reasonableness (*ante*, p. 48), perhaps the sub-tenants would not be altogether beyond the protection of the Act. (Indeed, so far as sect. 5 (1) (h) is concerned, it is not quite easy to understand why the tenant himself should be so.) It must be remembered, however, that a sub-lease of the entire premises is open to the independent objection that it amounts practically to an assignment. In *Campbell* v. *Lill*, (1926) W. N. 139, a Divisional Court held that where a statutory tenant had sub-let part of the premises, he had not thereby forfeited his protection under this Act (with a reservation of the question whether the sub-tenant would have been protected had the claim been against him). In *Roe* v. *Russell*, however, Scrutton, L.J., said of this case that it was difficult to see how the tenant could be protected and the sub-tenant not.

A tenant, unless prohibited by the terms of the contractual tenancy, can sub-let during the continuance of that tenancy. But if such a sub-letting extends to the whole of the premises and continues till that tenancy expires, while the sub-tenant will be entitled to hold over as statutory tenant, apparently the tenant himself is not within this section. If the tenant is not in occupation at the material time it cannot be said that he "retains possession" within the meaning of this section (*Ebner* v. *Lascelles*, (1928) 2 K. B. 486; *Hicks* v. *Scarsdale Brewery Co.*, (1924) W. N. 189; *Gidden* v. *Mills*, (1925) 2 K. B. 713; *Martin Estates Co., Ltd.* v. *Watt and Hunter* (1925) 1 N. I. R. 79). Greer, J., however, in *Gidden* v. *Mills* (*ubi sup.*), was of opinion that while the tenant is not protected in such a case, no judgment for possession is possible against him so long as the sub-tenant holds over under the protection of the Act; and in *West Wales Joint Board for the Mentally Defective* v. *Evans* (165 L. T. 396) judgment for possession against the sub-lessor was refused where a sub-lessee was in occupation and protected by the Acts. The section does not include a tenant ejected under a closing order made under the Housing, Town Planning, &c. Acts (now replaced by the Housing Act, 1925) who afterwards retakes possession (*Blake* v. *Smith*, (1921) 2 K. B. 685). It covers, however, the case of a tenant who, though personally absent from the premises, is in occupation thereof through members of his family (*Leslie & Co., Ltd.* v. *Cummings and others*, (1926) 2 K. B. 417; *Kreitman* v. *Vidofsky*, 43 T. L. R. 335).

What is said above must be read subject to the principle of *Prout* v. *Hunter* ((1924) 2 K. B. 736, *ante*, p. 73). Where the tenant has sub-let the premises furnished, this, in virtue of sect. 12 (2), proviso (i), takes the premises out of the Act

altogether. Where only part of the premises are so sub-let it would appear that the part sub-let is taken out of the Act and that the sub-tenant would not be protected against the sub-lessor (see *Leslie & Co.* v. *Cumming*, (1926) 2 K. B. at p. 423), nor would the lessee himself be protected against his own landlord in respect of that part. On the other hand, the fact that the premises have in whole or in part been sub-let furnished, whether during the contractual or the statutory tenancy, does not deprive the tenant of protection if the furnished tenancy or sub-tenancy has expired at the critical date when proceedings are taken for possession. The following cases should be referred to in this connexion.

In *Leslie & Co., Ltd.* v. *Cumming and others*, (1926) 2 K. B. 417, a tenant during his term sub-let the whole premises furnished, and after the expiration of the sub-lease, becoming statutory tenant, made a fresh sub-lease of part of the premises furnished. After expiry of this second sub-lease, in an action for possession, it was held that the tenant was protected. The first sub-lease did not fall within the principle of *Prout* v. *Hunter* (*ante*, p. 73), since it had expired at the date of the proceedings, and as to the second sub-lease, since this only extended to part of the premises, and further, since it had expired at the date when the writ was issued, the tenant was at this—the testing date—retaining possession. The case presents difficulties, since it seems to assume a process of decontrol during the sub-lease and recontrol when the sub-lease expires, which process, however, is contemplated as the effect of the Act by Greer, J., in *Phillips* v. *Hallahan*, (1925) 1 K. B. 756, at p. 760. But where a tenant occupied three rooms of a house and sub-let the rest furnished, a Divisional Court (Salter and Fraser, JJ.) gave judgment for possession of the rooms sub-let, on the ground that by dividing the premises into portions and sub-letting a portion as a separate dwelling-house furnished, the tenant had lost the protection of the Act so far as concerned that portion (*Spurling* v. *Pugh*, "Estates Gazette," 12th June, 1926). In *Ebner* v. *Lascelles* ((1928) 2 K. B. 486) the tenant had no personal occupation, but sub-let part of the premises furnished and the rest unfurnished. The sub-tenants having left shortly before, when the contractual term ended the premises were unoccupied and the landlord resumed possession. A Divisional Court held that in any event the tenant, whether protection as statutory tenant would have been possible or not, was at any rate entitled to the protection of the Act in respect of unduly high rent during the contractual tenancy. It may, however, be inferred from the judgments that a claim to be statutory tenant (1) would not have been barred by the furnished sub-letting since that had expired at the commencement of the proceedings, but (2) would have been barred by the fact that the tenant was not in occupation at that date.

How far involuntary assignment is possible is doubtful. In *Collis* v. *Flower*, (1921) 1 K. B. 409, where after the death of the tenant notice to quit was given to the executor who was permitting the residuary legatee to occupy the premises, the executor was held statutory tenant and ejectment refused against him and the residuary legatee. *Mellows* v. *Low*, (1923) 1 K. B. 522, deals similarly with the case of an administrator. In *Collis* v. *Flower* and *Mellows* v. *Low* the original tenancy was not terminated till after the tenant's death. Whether executor and administrator would become entitled to the deceased's interest where deceased was himself statutory tenant is doubtful. See opinions of McCardie, J., *pro*, in *Mellows* v. *Low*, *ubi sup.*, and *contra*, of Bankes, L.J., in *Keeves* v. *Dean*, *ubi sup.*, and of MacKinnon, J., in *Salter* v. *Lask* (No. 2), (1925) 1 K. B. 584, where Salter, J., expressed no opinion on the point. See also the observations of Scrutton, L.J., in *Roe* v. *Russell*, (1928) 2 K. B. at pp. 123—125. It was held by the Court of Appeal for Northern Ireland that executors do not succeed to a statutory tenancy (*Drury* v. *Johnston*, (1928) N. I. 25). At any rate there is an assignment of the statutory tenancy to the tenant's trustee in bankruptcy even where the contractual tenancy had already ended before the bankruptcy. Thus, on the bankruptcy of a statutory tenant the tenancy vests in the trustee in bankruptcy, but ceases on disclaimer by the trustee (*Parkinson* v. *Noel*, (1923) 1 K. B. 117). After disclaimer the bankrupt himself is not statutory tenant whether the original tenancy terminated before (*Parkinson* v. *Noel*, *ubi sup.*) or after (*Reeves* v. *Davies*, (1921) 2 K. B. 486) bankruptcy. A statutory tenant probably cannot dispose of his tenancy by will (see judgment of Scrutton, L.J., in *Roe* v. *Russell*, (1928) 2 K. B. 117).

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

This leaves a statutory tenant free to bargain with the landlord as to the terms on which he surrenders possession, but not to demand key money from an incoming tenant. On the other hand,

neither sect. 8 nor this section covers the case where the tenant takes a premium for assigning his tenancy before expiration (*Mason, Herring and Brooks* v. *Harris*, (1921) 1 K. B. 653; *Remmington* v. *Larchin*, (1921) W. N. 222), though this section applies to a premium on an assignment of the statutory tenancy and was relied on by Scrutton, L.J., as a reason for holding the assignment illegal. See *Keeves* v. *Dean*, *Nunn* v. *Pellegrini* (*ante* in note to last sub-section). Cp. observations in *Mellows* v. *Low*, (1923) 1 K. B. 522.

See as to sales of furniture, Rent and Mortgage Interest Restrictions Act, 1923, s. 9, and cp. sect. 8 (2).

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

"or for any other reason," *e.g.*, voluntary surrender by the tenant (per Scrutton, L.J., in *Barton* v. *Fincham*, (1921) 2 K. B. at p. 297). A sub-tenant continues to enjoy the protection of the Act though a forfeiture has been incurred by the lessee (*Ward* v. *Larkins*, (1923) W. N. 189). "Lawfully sublet," see *ante*, p. 54.

16. *Minor amendments of law.*—(1) [This sub-section has been repealed by the Rating and Valuation Act, 1925, s. 69, as from a date to be fixed by the Minister of Health which is the date of the first new valuation under the Act. (Rating and Valuation (Repeals) Order, 1927, S. R. & O., 1927, No. 90.) The sub-section, however, continues to possess importance for reasons appearing below. It runs as follows:—] *Section three of the Poor Rate Assessment and Collection Act*, 1869 (32 & 33 *Vict. c.* 41), *shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.*

Under the Poor Rate Assessment and Collection Act, 1869, s. 3, referred to, where the rateable value did not exceed 20*l.* in the Metropolis, 13*l.* Liverpool, 10*l.* Manchester or Birmingham, and 8*l.* elsewhere, the landlord might compound the rates, *i.e.*, agree to be rated and pay them himself instead of the tenant, less a commission, sect. 4 of the Act enabling the rating authority in these cases to rate the owner compulsorily. These sects. 3 and 4 of the Act of 1869 have, together with the present sub-section, been repealed by the Rating and Valuation Act, 1925, sect. 11 of which introduces a new provision as to compounding, which comes into operation as from "the date of the first new valuation" (*i.e.*, 1st April, 1928, or 1st April, 1929, according to locality). Since the new provision adopts by reference the former limits of value, the repealed sub-section of this Act and the repealed sect. 3 of the Act of 1869 continue practically important. The object of the sub-section is to secure that houses are not to be taken outside the defined limits merely by reason of an increase in rateable value due to increase of rent permitted by this Act. It may here be incidentally mentioned that the Valuation (Metropolis) Amendment Act, 1925, contains provisions as to the assessment of metropolitan property designed to enable valuations to reflect the 40 per cent. increases allowed by this Act without disturbing the existing adjustment of increase in respect of rates.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

Where the landlord gives notice the tenancy will be determined (*ante*, p. 39), though the tenant is entitled to stay on under a statutory tenancy. Now acceptance by the landlord of rent accruing due after the expiration of the notice was held by a Divisional Court in *Hartell* v. *Blackler*, (1920) 2 K. B. 161, to be a waiver of the notice. That case, however, has been dissented from by another Divisional Court in the cases of

Davies v. *Bristow* and *Penrhos College, Ltd.* v. *Butler* (reported together, (1920) 3 K. B. 428), and can no longer be relied on. Acceptance of rent for the statutory tenancy would therefore, apart from this section, not have amounted to a waiver, for the payment to the landlord would be *in invitum*, and the acceptance of it in the circumstances not a voluntary act on his part (*Davies* v. *Bristow, supra;* cp. *Evans* v. *Enever,* (1920) 2 K. B. 315), and in face of the sub-section acceptance of rent within the three months' limit would clearly not operate as a waiver ("waiver," as the Court pointed out, not being a very accurate expression in the circumstance and only to be understood as meaning that the landlord has agreed to a new tenancy on the old terms). It was suggested in a former edition that acceptance of rent for a period exceeding three months would not operate as a waiver of a notice to quit already given. It was held (though without express argument on this sub-section) in *Town Properties Development Co., Ltd.* v. *Winter* (37 T. L. R. 979) that there was no waiver where two quarters' rent had been accepted, and it is now expressly decided that acceptance of rent for a period exceeding three months would not create a fresh tenancy so as to make necessary a fresh notice to quit before any increase of rent (*Shuter* v. *Hersh*, (1922) 1 K. B. 438; *Felce* v. *Hill*, (1923) W. N. 235; *Creamer* v. *Mitchell*, Estates Gazette, July 28th, 1923).

The effect of a judgment in the landlord's favour for increases which, in virtue of this legislation, were not in fact legally recoverable, may be noticed here. The increase included in the judgment must, of course, be paid, but the tenant is not estopped from disputing similar increases not included in the judgment (*Adams* v. *Garrod*, Estates Gazette, July 14th, 1923).

17. *Rules as to procedure.*—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a

person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

By sub-sect. (2) the County Court can entertain claims, *e.g.*, for repayment of rent or mortgage interest irrespective of amount. It has been decided that it can in virtue of this section also entertain an ejectment action not otherwise within the limits of its jurisdiction. It might, it is true, be plausibly argued that since the Act itself gives no power to order possession (*ante*, p. 38), and since the landlord must show that he has a claim independently of the Act, a claim in ejectment does not "arise out of the Act" within the meaning of this section, and this view was inferentially adopted in the Scotch case of *Purves* v. *Graham* ((1924) S. C. 477), and acted on by Roche, J., in an unreported case of *Stephenson* v. *Edwards*, and in the Irish case of *Hodgens* v. *Fury*, (1925) 2 I. R. 69, decided on the similar language of the Free State Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 (No. 19 of 1923). Atkin, L.J., however, in *Gill* v. *Luck*, (1923) W. N. 284, favoured the contrary view, which has also been adopted in *Wolff* v. *Smith*, (1923) 2 Ch. 293, where it was held that High Court costs must be refused to a statutory tenant suing for breach of the covenant for quiet enjoyment. In *Lee* v. *Roberts*, 159 L. T. Newspaper, 531, no costs were allowed in respect of a claim in a High Court action against a statutory tenant for damages for breach of his covenant to repair. Cp. also the Irish case of *Connolly* v. *Whelan*, 54 I. L. T. Rep. 18. Finally, in *Russoff* v. *Lipovitch*, (1925) 1 K. B. 628, the Court of Appeal has decided that a claim in ejectment in respect of premises to which the Act applies is a claim arising out of the Act within the meaning of this section—at any rate where possession is sought against a statutory tenant. Whether, however, this section covers a case in which the premises are capable of falling within the Act, but the defendant himself a mere trespasser not entitled to the protection of the Act, is still doubtful. In *Gunter* v. *Davis*, (1925) 1 K. B. 124, McCardie, J., decided that it did not. In *Russoff* v. *Lipovitch*, (1925) 1 K. B. 628, the question is reserved by the judgment of Atkin, L.J. Costs were refused where the plaintiff sued in the High Court for possession of a house let furnished and so outside the Acts (*Myers* v. *Lilley* (1927), "Estates Gazette," Digest of Cases, 101). The principle of *Russoff* v. *Lipovitch* appears to penalise as to costs a plaintiff who sues in the High Court for rent which includes increases authorised by the Act (see *Russoff* v. *Lipovitch*, *ubi sup.* at p. 638), and was held by the Court of Appeal in *Cloutt* v. *London and Provincial Stores, Ltd.* (161 L. T. Newspaper, 48), to confer jurisdiction on the County Court to grant an injunction

against a landlord from interfering with a statutory tenant with damages for trespass and detinue of chattels. Where, in an action in the High Court to recover possession of a house falling within the Act, the tenant unsuccessfully counterclaimed that he had an option for renewal, while this section deprived the plaintiff of the costs of the claim, it did not prevent his being given the costs of the counterclaim (*Branch* v. *Bennet's Dairies*, 44 T. L. R. 605).

In *French* v. *Lowen* (*Times* Newspaper, April 1st, 1925) costs were allowed in a High Court action in which plaintiff, a former statutory tenant, recovered damages for a fraudulent misrepresentation by the landlord that the premises were required for the landlord's own occupation, in consequence of which plaintiff, thinking it useless to resist the landlord's claim to possession, vacated the premises. (The action was apparently a common law action of deceit, and not based on sect. 5 (6) of this Act. Nor was the section now under consideration adverted to in the case.)

By the Administration of Justice Act, 1920, s. 3 (2), "notwithstanding anything in any Act, it shall not be lawful for any party in a County Court or other civil Court of inferior jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried with a jury." The principle of *Russoff* v. *Lipovitch* is, of course, applicable to the language of this provision, and the decision in the case was in fact partly based on a consideration thereof.

A further point of doubt is how far the principle of *Russoff* v. *Lipovitch* applies to actions respecting mortgages of property to which the Act applies. In *Evans* v. *Horner*, (1925) Ch. 177, the usual foreclosure decree was made, it being assumed without discussion that this section was inapplicable. There is a possible distinction to be drawn as regards mortgage actions, since *Russoff* v. *Lipovitch* is partly founded on the language of sect. 5 (5) and (6), which speak of "orders for possession under the section," whereas no similar language is used of foreclosure actions. It is thought that the principle of *Russoff* v. *Lipovitch* would probably not be extended to such cases. At the same time it must be remembered that in foreclosure actions a claim for possession is usually included, and the question is somewhat entangled with the other problems presented by these Acts in connection with mortgages.

There will, apparently, be an appeal from the County Court to a Divisional Court in all cases, except those under sect. 2, sub-sects. (1), (2) and (3) (see sect. 2, sub-sect. (6)), and sect. 12, sub-sect. (3), *ante*, p. 77 (*The Delano*, (1895) P. 40). Where the County Court judge refused an order for possession and made no order as to costs, it was held costs followed the event (*Bensusan* v. *Bustard*, (1920) 3 K. B. 654). But the Court should consider the question of costs and make an order (*ibid.*).

The Act is not a statutory defence requiring notice under the County Court Rules (*Barton* v. *Fincham*, (1921) 2 K. B. at p. 299; see also *Salter* v. *Lask* (No. 1), (1924) 1 K. B. 754, *ante*, p. 39).

18. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

(a) "Mortgage" and "incumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "land" means lands and heritages; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 53); "Lord Chancellor" and "High Court" mean the Court of Session; "rules" means act of sederunt; "county court" means the sheriff court; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38); "mesne profits" means profits; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the

Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46); references to levying distress shall be construed as references to doing diligence; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919 (9 & 10 Geo. 5, c. 60), shall be substituted for a reference to section seven of the Housing, Town Planning, &c. Act, 1919; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41):

(b) Nothing in paragraph (b) of subsection (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911:

(c) Paragraph (d) of subsection (1) of the section of this Act relating to application and interpretation shall not apply:

This is because the House Letting and Rating (Scotland) Act, 1920 (10 & 11 Geo. V. c. 8), has already dealt with the subject. See also Rent and Mortgage Interest Restrictions Act, 1923, s. 19.

(d) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications:—

As to the application of the Act to Ireland, see further, *ante*, p. 4.

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor:

(b) A reference to section fifteen of the Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838:

(c) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires:

(d) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise:

(e) The following paragraph shall be substituted for paragraph (ii) of sub-section (1) of section five of this Act:

(ii) Where the Court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding: or

(f) The following subsection shall be substituted for subsection (9) of section twelve of this Act:

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852 (15 & 16 Vict. c. 63), were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant:

(g) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland:

(h) This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

19. *Short title, duration, and repeal.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three:

This date having been changed to July 31st, 1923, by the Rent Restrictions (Continuance) Act, 1923, then to June 24th, 1925, by the Rent and Mortgage Interest Restrictions Act, 1923, was further changed to December 25th, 1927 (in Scotland, May 28th, 1928), by the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925, *post*, p. 146. The Expiring Laws Continuance Act, 1927, changed these dates to December 25th, 1928, and May 28th, 1929, and the Expiring Laws Continuance Act, 1928, changed them yet again to December 25th, 1929, and May 28th, 1930. The "as otherwise provided" refers to sect. 13.

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

In view of the need for reference to the old Acts which still exists notwithstanding their repeal, it has been thought convenient to set them out in an Appendix.

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in

any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

The importance of this proviso is lessened by the reimposition of a time limit for the recovery of overpayments by the Rent and Mortgage Interest Restrictions Act, 1923, s. 8, and the following observations on this section made in a previous edition must now be read subject to this consideration. We wrote:—

"By sect. 38 of the Interpretation Act, 1889, a repeal is not *inter alia* to affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the repealed enactment.

"The effect of the proviso, as read with the other provisions of the Act, it is submitted, is that though the repealed Acts are replaced by the present Act, houses which were already protected by those Acts enjoyed their existing protection till this Act operated to protect them as to the future. Thus, if a house let in August, 1914, at 20*l.* per annum had its rent increased to 30*l.* in 1916, the increase for the future is invalidated by the Act as from March 25th, 1920, but even previously to that the increase was invalidated by the 1915 Act, and continues so to be notwithstanding the repeal of that Act. Hence rent overpaid, even in respect of a period before March 25th, 1920, will be recoverable, except that under the 1915 Act, as amended by later provisions, such overpayment was only recoverable within six months, and if on 2nd July, 1920, recovery was already barred in this way it will continue so to be. But in all other respects the six months' limit is now inapplicable, whether the house fell within the previous Acts or not, *i.e.*, the time limit for recovery is now abrogated, but without reviving rights not *in esse* at the passing of this Act." We were able to add that this view advanced by us in an earlier edition had been affirmed in *Rawlinson* v. *Alger*, (1921) W. N. 90.

It was held in *Benabo* v. *Horseley*, (1920) W. N. 299, that this proviso to sub-sect. (3) applied to proceedings by way of appeal.

SCHEDULES.

[N.B.—The First Schedule is printed as amended by the Rent and Mortgage Interest Restrictions Act, 1923, s. 6 (2), with "date of *service of* this notice" substituted for "date of this notice."]

FIRST SCHEDULE. Sects. 3 & 18.

FORM OF NOTICE BY LANDLORD.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

Date .

To

Address of premises to which this notice refers - -

Take notice that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per .

The increase is made up as follows:—

(a) *l.* *s.* *d.* under paragraph (a) of subsection (1) of section two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(b) *l.* *s.* *d.* under paragraph (b) of subsection (1) of section two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per in respect of the premises.

(c) *l.* *s.* *d.* under paragraph (c) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(d) *l.* *s.* *d.* under paragraph (d) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

The increase under head (b) will date from , being one clear week from the date of service of this notice, and the remaining increases from , being four clear weeks from the date of service of this notice.

* Here state improvements and alterations effected. [This note is statutory.]

* The increase under head (d) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

† At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (c) and (d) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is .

‡ Signed

Address

SECOND SCHEDULE.

ENACTMENTS REPEALED.

The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97) (the whole Act).

The Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25) (sects. 4, 5 and 7).

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7) (the whole Act).

The Increase of Rent, &c. (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 90) (the whole Act).

As to this schedule, see *ante*, p. 105. The Increase of Rent, &c. (Amendment) Act, 1918, was already repealed by the last Act in the schedule.

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* Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the county court. [This note is statutory.]

† This paragraph need not be included if there is no increase under head (*d*). [This note is statutory.]

‡ See note, *ante*, p. 34.

INCREASE OF RENT AND MORTGAGE INTEREST RESTRICTIONS (CONTINUANCE) ACT, 1923.

13 & 14 Geo. 5, c. 7.

[This Act merely continued the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act till 31st July, 1923. In view of still later extensions of the Acts it is now obsolete.]

RENT RESTRICTIONS (NOTICES OF INCREASE) ACT, 1923.

13 & 14 Geo. 5, c. 13.

An Act to amend the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, *with respect to the effect of notices to increase rent given thereunder; and for purposes consequential thereon.* [7th June, 1923.]

Note on the general purpose of this Act.—Sect. 3 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, provides that nothing in the Act shall authorise any increase of rent "except in respect of a period during which but for this Act the landlord would be entitled to obtain possession." It was decided by the House of Lords that this clause prevented any increase on the rent of tenants under a continuing tenancy (*i.e.*, weekly, monthly and yearly tenancies) unless the tenancy was first determined by due notice to quit pursuant to the "basic" principle (*ante*, p. 23) that a landlord could not increase rent merely by giving notice of increase; he must first determine any existing tenancy (*Kerr and Others* v. *Bryde*, (1923) A. C. 16). In the same case their Lordships also held that the statutory notice of increase of rent was not in itself notice to quit.

The result was that where the landlord had given the statutory notice of increase but no notice to quit, the increase was invalid, and if paid by the tenant was recoverable from the landlord. With this situation the present Act deals. Retaining the "basic

principle" of *Kerr* v. *Bryde* that no increase is authorised during an existing tenancy, it evades that doctrine as to continuing tenancies by making the statutory notice of increase in itself equivalent to notice to quit. Statutory notice of increase to a weekly tenant is therefore effective now though no express notice to quit is given.

Further, the Act is retrospective in a somewhat complicated way. As from December 1st, 1922, to its passing the Act has full retrospective effect except that (1) to secure this retrospective operation the landlord has to give a notice claiming the benefit of this Act (sect. 2 (2))—a new statutory form being provided for the purpose—and (2) the arrears of increase for the period in question are only payable by instalments (sect. 2 (1)). These arrears are not subject to the usual time limit (see *post*, p. 133).

As to the period before Dec. 1st, 1922, the policy of the Act is to accept the accomplished fact. Where the tenant has insisted on his *Kerr* v. *Bryde* rights, they are left to him intact. If the landlord does not already possess his increase for this period, he is still unable to obtain it. Where, on the other hand, the tenant has paid and the landlord holds increases decided by *Kerr* v. *Bryde* to be invalid, the present Act prevents the tenant from obtaining a refund from the landlord.

While the main object of the Act is to validate increases otherwise bad, the statutory notice will be an effective notice to quit for all purposes, including that of ejectment (*Aston* v. *Smith*, (1924) 2 K. B. 143).

1. *Effect of notices to increase rent under principal Act.*—(1) Where notice of intention to increase rent has, whether before or after the passing of this Act, been served on a tenant in conformity with subsection (2) of section three of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), and a notice to terminate the tenancy was necessary in order to make such increase effective, the notice of intention to increase the rent shall have effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was first to take effect, or on the earliest day thereafter on which if it had been a notice to terminate the tenancy, it would have been effective for that purpose, and in the latter case a notice of increase served before the passing of

this Act shall be deemed to have had effect as if such earliest date had been specified in the notice as the date as from which the increase was to take effect:

Provided that—

(a) nothing in this Act shall entitle a landlord after the passing of this Act to recover from a tenant, in respect of any period before the first day of December, nineteen hundred and twenty-two, the increase of rent made valid by this Act, or any sums which have been recovered from the landlord before that date by means of deductions from rent or otherwise, or any rent due before that date which has not been paid by reason of such deductions having been made therefrom; but section fourteen, subsection (1), of the principal Act shall not apply to an increase of rent made valid by this Act which was paid by, or recovered from, a tenant prior to the first day of December, nineteen hundred and twenty-two;

(b) nothing in this Act shall affect the right to enforce any judgment of a court of competent jurisdiction given before the fifteenth day of February, nineteen hundred and twenty-three, or render recoverable any sum paid under such a judgment.

(2) Any increase of rent made valid by this Act is hereinafter referred to as a validated increase of rent.

This section (1) preserves the doctrine of *Kerr* v. *Bryde*, so that increase of rent during the existence of a continuing tenancy (*i.e.*, a yearly, monthly or weekly tenancy) is still impossible; (2) modifies the practical application of the doctrine to such tenancies by making the statutory notice of increase in itself equivalent to a notice to quit. In the result, separate notice to quit is not a condition precedent to the increase of rent in the case of continuing tenancies. In the case of such tenancies the statutory notice of increase, as soon as it takes effect under this section as notice to quit, overrides sect. 3 (1) of the principal Act, which provides that "nothing in the Act shall be taken to authorise an increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession."

Further, these provisions are (without prejudice to any judgment before February 15th, 1923, being the date when the Act was originally introduced in Parliament) retrospective within certain limits. The following statement of the retrospective effect of the Act contained in a previous edition has now been affirmed by *Landrigan* v. *Simmons* ((1924) 1 K. B. 509):—

(1) As to increases validated by the present Act in respect of the period commencing Dec. 1st, 1922 (date of a Government announcement of intention to pass the Act), the retrospective operation is absolute. If the increase has not been paid the landlord is entitled to enforce payment (though only by instalments (sect. 2 (1), *post*) and only on complying with sect. 2 (2), *post*): if he has received payment he cannot be compelled to refund by the tenant. Nor can the tenant secure a refund by deduction from future payments of rent.

(2) As to validated increases in respect of a period before Dec 1st, 1922, retrospective operation varies with circumstances. Where the landlord has in fact had and retains the increase, the *fait accompli* is accepted and the payment is irrecoverable by the tenant. Where the landlord is not in the position of having had the increase (*i.e.*, has never been paid it, or, having been paid it, has subsequently been forced to refund it to the tenant, *e.g.*, by deduction from rent under sect. 14 of the Act of 1920), the tenant remains entitled to the benefit of *Kerr* v. *Bryde* and the increase remains irrecoverable from him. The position is crystallised as on December 1st, 1922 (*Landrigan* v. *Simmons*, *ubi sup.*). This result was given effect to on appeal, the Act having been passed pending the hearing in the Court below (*ibid.*).

Increases which were bad in virtue of *Kerr* v. *Bryde* and are made good by the present Act are referred to as "validated increases" (sub-sect. (2), *infra*). It remains to consider the date from which validation operates.

The increase is still, by sect. 3 (1) of the principal Act, prevented from becoming effective till the tenancy is terminated, which the present section provides will be either (a) on the day before the increase is first to take effect under the notice, or (b) the earliest date thereafter when express notice to quit would have operated, whichever (in our construction of the section) is the later date.

A yearly tenancy must, unless some other notice is required by contract, local custom or statute, be determined by half a year's notice expiring with a current year of the tenancy. Half a year's notice means a full 182 days, except where the tenancy commenced on one of the usual quarter days, when a customary half year's notice sufficies, *i.e.*, one on or before the quarter day next but one before the quarter day on which it is to determine. When the term commences on or from a given date, notice to quit

on the anniversary date is, as regards the date of expiration, a valid notice. (*Sidebotham* v. *Holland*, (1895) 1 Q. B. 378. See also *Meggeson* v. *Groves*, (1917) 1 Ch. 158.) In the case of yearly tenancies, therefore, the statutory notice of increase will take effect as notice to quit on a date ascertained in accordance with the rules just mentioned, and the increase will take effect as from that date.

The cases of monthly and weekly tenancies are complicated by a difficulty as to the date (a) above referred to. The Act talks of *the* increase first taking effect, but there may be two increases, viz., that in respect of rates and that in respect of other matters, the two taking effect at different dates, *i.e.*, the expiration of a week and of a month respectively (*ante*, p. 33). It is submitted, however, that where the statutory notice of increase demands an increase in respect of rates at the end of a week and a further increase at the end of a month, "the increase is *first* to take effect" at the end of the week, the word "first" being probably inserted with a view to this case.

Probably, as a result of these authorities, taken as a whole, there is little danger. To determine a monthly or weekly tenancy a full month's or week's notice expiring with a current month or week of the tenancy is required (*Precious* v. *Reedie*, (1924) 2 K. B. 149; *Newman* v. *Slade*, (1926) 2 K. B. 328). In computing the length of notice given, the Court excludes the day on which the notice is given, but includes the day for which it is given, *e.g.*, where a weekly tenant held from Monday to Monday, notice given on Monday, February 8th, to expire on the following Monday, February 15th, was a sufficient notice (*Newman* v. *Slade*, (1926) 2 K. B. 328, explaining *Weston* v. *Fidler*, 47 S. J. 567). It appears, therefore, that in the case of weekly tenancies, at the end of a week from the statutory notice, if that date coincides with the expiry of a current week of the tenancy, and otherwise at the end of the current week expiring immediately after that date, the tenant is outside *Kerr* v. *Bryde* and liable forthwith to the increase for rates (though he will not be liable for the additional increase till after a month from the statutory notice).

As to monthly tenancies, the increase will operate as from a month from the statutory notice of increase if that date coincides with the end of a current month, and otherwise at the first expiry of a current month after that date.

It must be remembered that the increase is not "validated" absolutely, *i.e.*, any increase made "valid by this Act" is only made valid in the sense that it is no longer invalidated by sect. 3 (1) of the principal Act under the doctrine of *Kerr* v. *Bryde*. There is nothing in this Act to validate any increase bad on other grounds,

e.g., because the statutory form of notice of increase was defective or because the time limit imposed by sect. 3 (2) of the principal Act has not yet expired. (Cp. the position as to weekly tenancies, *ante*.) But the concluding words of the first para. of sect. 1 will, as to notices before the Act, prevent their being invalid by reason of failure to indicate accurately the date of commencement of the increase.

As to the effect of an amendment of the statutory notice of increase, see note to the Rent and Mortgage Interest Restrictions Act, 1923, s. 6.

2. *Payment of arrears by instalments.*—(1) The amount due under this Act on account of any arrears of rent, that is to say,—

(a) any validated increase of rent in respect of the period from the first day of December, nineteen hundred and twenty-two, to the date of the passing of this Act, both inclusive; and

(b) any sum which during the said period has been recovered by the tenant from the landlord by deductions from rent or otherwise, and which would not have been so recoverable had this Act been then in force;

shall be payable by instalments with and as part of the periodical payments of rent, each instalment being fifteen per cent. of the standard rent for the week, month, or other period for which the rent is payable, fractions of a penny being disregarded; and such instalments shall continue payable until the whole of the amount of such arrears is paid off:

Provided that—

(i) the tenant may at any time pay to the landlord the full amount of such arrears subject to the deduction of the aggregate amount of the instalments (if any) already paid; and

(ii) if a tenant by whom any such instalments are payable gives up possession of the premises either voluntarily or on any order or judgment of a court, the balance of the sum payable by instalments shall immediately become due and recoverable.

"Or otherwise" does not, however, include the case where it has been recovered from the lessor under a judgment given before Feb. 15th, 1923 (sect. 1, proviso (b)).

(2) A landlord claiming that a sum on account of arrears of rent is due to him under this Act shall serve on the tenant a notice to that effect, and the notice shall specify the amount so claimed and the amount of the instalments claimed to be payable, and the first instalment shall not be payable until after the expiration of one clear week from the date of the notice. If such notice contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive.

It will be observed that it is only in connection with arrears that this second statutory notice of validation has any application.

The first instalment will be payable on the first rent day after the expiration of one clear week from the date of the notice under this sub-section—see statutory note to statutory form, *infra*, p. 118.

(3) The notice shall be in the form contained in the Schedule to this Act, or in a form substantially to the same effect, and the landlord shall furnish the tenant with details in writing showing how the amount claimed is arrived at, and how the amount of the instalments has been calculated.

Cp. the language of the principal Act, sect. 3 (2), and decisions thereon. Any substantial departure from the form would, no doubt, invalidate the notice. Written details as to how the amount is arrived at are to be supplied in a separate statement—see conclusion of statutory form, *post*, p. 119.

(4) Any question as to the amount of arrears due from a tenant, or the amount of any instalments, shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

Cp. sect. 2 (6) of the principal Act.

"Final and conclusive."—See *Lyon* v. *Morris*, 19 Q. B. D. 139, and *Strickland* v. *Palmer*, *ante*, p. 26.

Application under this section should apparently be by summons.

3. *Power to suspend liability if premises unfit for human habitation or in state of disrepair.*—(1) A tenant, who becomes by virtue of this Act liable to pay any sum by way of rent or on account of arrears, or the sanitary authority, may apply to the county court for an order suspending such liability on the ground that the house is not in all respects reasonably fit for human habitation or that it is otherwise not in a reasonable state of repair, and section two of the principal Act shall apply as if the application had been made under subsection (2) of that section.

Sect. 2 (2) of the principal Act authorises the tenant or sanitary authority to apply to the County Court for an order suspending increase of rent where the house is not in all respects reasonably fit for human habitation or is otherwise not in a reasonable state of repair. The jurisdiction of the County Court is exclusive, the High Court having no jurisdiction (*X Rays, Limited* v. *Armitage*, 66 S. J. 351), and the County Court decision is final whether the application is made by the sanitary authority or the tenant. (*Glasgow Corporation* v. *Mickel*, (1922) S. C. 228.)

It is thought that the time limit of three months under sect. 2 (2) of the principal Act has no application to proceedings under the present sub-section. The wording of the statutory form, *infra*, confirms this view, and it would seem that a *Kerr* v. *Bryde* tenant only liable for increased rent under this Act can obtain an order suspending all increase or arrears of increase. The tenant liable to increase under the principal Act can obtain suspension only of part of his increase (viz., increase falling under paras. (c) and (d) of sect. 2 (1) of the principal Act, not, *e.g.*, increase in respect of rates).

(2) Where the liability in respect of the payment of instalments is so suspended, the instalments which would have become payable during the period of suspension, shall for the purpose of calculating the aggregate amount of instalments paid be deemed to have been paid.

It will be observed that where an order of suspension is made increased rent or arrears thereof falling due during the currency

of the order will be completely cancelled and will not become payable even after the order has expired. The obvious step for the lessor whose property is in a bad state of repair is to put matters right before giving the statutory notice under this Act if he wishes to recover his instalments of arrears. There is no time limit for the statutory notice under this Act.

(3) Where a tenant has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any sum which the tenant is by virtue of this Act liable to pay by way of rent or on account of arrears in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes any such sum), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that the foregoing provision shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

This sub-section overlaps the previous sub-sect. (1). Like that sub-section it applies only to sums claimable by the lessor in virtue of this Act, and to the whole of such sums, but unlike sub-sect. (1), the present sub-section operates without the tenant having himself to make application to the Court. (Cp. also Rent and Mortgage Interest Restrictions Act, 1923, s. 5, *post*, p. 129.)

(4) For the purposes of this Act a certificate of a sanitary authority shall specify what works (if any) require to be executed in order to put the house into a reasonable state of repair.

(5) An instrument purporting to be a certificate of a sanitary authority and to be signed by an officer of the authority shall, without further proof, be taken to be a certificate of the authority unless the contrary is proved.

(6) A sanitary authority may appoint a committee for the purposes of this Act and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under this Act.

4. *Short title and construction.*—This Act may be cited as the Rent Restrictions (Notices of Increase) Act, 1923, and shall be construed as one with the principal Act, except that this Act shall not extend to Ireland.

SCHEDULE.

FORM OF NOTICE BY LANDLORD.

Rent Restrictions (Notices of Increase) Act, 1923.

To Date .

Address of premises to which this notice refers - -

TAKE NOTICE that I claim that the sum of is due to me from you as tenant of the above premises on account of arrears of rent under the above-mentioned Act.

The amount due on account of such arrears is payable by instalments with, and as part of, your weekly [*monthly, or other periodical*] rent until the amount of such arrears is paid off. The first instalment will be payable on the day of .*

The amount of the instalments claimed by me is a week [*month, or other period, as the case may be*].

If you wish to dispute the amount of the sum claimed or of the instalments, you are entitled to apply to the County Court of .

You are entitled to apply to the County Court for an order suspending any sum due from you by way of rent, or on account of arrears, under the above-mentioned Act, if you consider that the premises are not in all respects reasonably fit for human habitation

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* The date to be inserted will be the first rent day after the expiration of one clear week from the date of the notice. [N.B.—This asterisked note is statutory and forms part of the Act.]

or otherwise not in a reasonable state of repair. You will be required to satisfy the County Court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable, but, if the certificate is granted, you can deduct this sum from the sum due from you as aforesaid. The address of the sanitary authority is .

If at any time you give up possession of the above premises, either voluntarily or on an order or judgment of the Court, the balance of the sum payable by instalments will immediately become due.

A statement is sent herewith showing how the amount of the above claim is arrived at, and how the amount of the instalments has been calculated.

Signed .

Address .

[It must be remembered that this form needs supplementing in accordance with sect. 2 (3).

The County Court in question will apparently be that of the district in which the premises are situate. (Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, r. 1.)]

RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923.

[13 & 14 Geo. 5, c. 32.]

An Act to amend and prolong the duration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and any enactment amending that Act, and to make provision as to the rent and recovery of possession of premises in certain cases after the expiry of that Act, and for purposes in connection therewith. [31st July, 1923.]

Part I.

Amendment and Prolongation of Duration of Principal Act.

1. *Prolongation of duration of principal Act.*—Subject to the provisions of this Act, the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (hereinafter referred to as the principal Act), shall continue in force until the twenty-fourth day of June, nineteen hundred and twenty-five. (*Read 25th December*, 1929, *see post*, p. 147.)

See the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925, and Expiring Laws Continuance Acts, 1927 and 1928, *post*, p. 147.

In Scotland the date was May 28th, 1925 (sect. 19, *post*), and now is May 28th, 1930 (see *post*, p. 147).

2. *Exclusion of dwelling-houses from application of principal Act in certain cases.*—(1) Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this

Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house:

Provided that where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the tenant being in or coming into possession of that part, and if the landlord is in, or comes into possession of any part not so sub-let the principal Act shall cease to apply to that part, notwithstanding that a sub-tenant continues in, or retains, possession of any other part by virtue of the principal Act:

Provided also that where a landlord comes into possession under an order or judgment made or given after the passing of this Act, on the ground of non-payment of rent, the principal Act shall, notwithstanding anything in the foregoing provisions of this subsection, continue to apply to the dwelling-house.

(2) Where, at any time after the passing of this Act, the landlord of a dwelling-house to which the principal Act applies grants to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-six (*for "after the 24th June, 1926," read, "not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the principal Act," see post, p.* 146), being a term of not less than two years, or enters into a valid agreement with the tenant for a tenancy for such a term, the principal Act shall, as from the commencement of the term, cease to apply to the dwelling-house, and nothing in the principal Act shall be taken as preventing or invalidating the payment of any agreed sum as part of the consideration for such lease or agreement:

Provided that where part of the dwelling-house is lawfully sub-let at the commencement of the term, and is a dwelling-house to which the principal Act applies, that part shall, notwithstanding anything in the foregoing provisions of this sub-section, continue to be a dwelling-house to which the principal Act applies.

(3) For the purposes of this section the expression "possession" shall be construed as meaning "actual possession," and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent.

"Passing of this Act," *i.e.*, July 31st, 1923. For the substituted reading required in sub-sect. (2), and printed above in italics, see the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925, *post*, p. 146.

This section effects the immediate decontrol of the houses specified, thus modifying the principle of sect. 12 (6) of the principal Act that "once within the Act is always within the Act." The decontrolled houses fall into two classes, according as decontrol is effected by sub-sect. (1) or sub-sect. (2).

Houses decontrolled under sub-sect. (1) *in virtue of the landlord's actual possession.*—This sub-section has given rise to many difficulties. Some of these have been elucidated by the Court of Appeal in a group of cases—*Lloyd* v. *Cook, Goudge* v. *Broughton, Simson* v. *Miatt, Bartram* v. *Brown, Barker* v. *Hutson* (44 T. L. R. 761)—which have been decided together by the Court of Appeal, approving *Ratkinsky* v. *Jacobs* (44 T. L. R. 548), and overruling *Cohen* v. *Gold* ((1927) 1 K. B. 865).

The result will appear from the following illustrations:—

(1) A., a freeholder, was, when the Rent and Mortgage Interest Restrictions Act, 1923, came into operation (31st July, 1923), in actual possession of the premises. The premises, even if never previously let, are decontrolled in virtue of the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1). If A. lets to a tenant, C., C. does not enjoy the protection of the Acts (*Goudge* v. *Broughton; Lloyd* v. *Cook, ubi sup.*).

Decontrol may arise in virtue of actual possession by the landlord, though the premises have never been let. A house may be "decontrolled" though it has never been effectively in control. In such a case the freeholder is not and never has been "landlord" in the strict technical sense, but he is a "landlord" within the meaning of this sub-section.

(2) A., the freeholder of a dwelling-house which is decontrolled in virtue of his actual possession, lets certain rooms in the house, never previously the subject of a separate letting, to B. The rooms so let are still decontrolled, and B. is not protected by the Acts (*Barker* v. *Hutson*; *Simson* v. *Miatt*, *ubi sup.*).

Where a dwelling-house is decontrolled in virtue of actual possession by the freeholder, it is decontrolled absolutely and as regards every part thereof, and if part is subsequently let separately, that part remains decontrolled, even though there has been no previous separate letting of that part. For the purpose of attracting control, it cannot be argued that the part let constitutes in itself a fresh dwelling-house.

(3) The above illustrations still hold good if for "freeholder" is substituted "a tenant at a rent less than two-thirds of the rateable value."

This is by reason of sect. 12 (7) of the principal Act, which excludes tenancies at such a rent from the operation of the Acts. See, further, *Finey* v. *Gougoltz* (*post*, p. 125) and *Brooks* v. *Liffen* (*post*, p. 127).

(4) A., a freeholder, let to B. (the case not falling within sect. 12 (7) of the principal Act). B. lawfully sub-let the whole house to C., who vacated, and B. resumed possession. It is not clear whether the house is decontrolled, *i.e.*, it is not certain whether the possession of a sub-lessor (unless he be a sub-lessor falling within sect. 12 (7) of the principal Act) involves decontrol. It was held in *Oakley* v. *Wilson*, (1927) 2 K. B. 279, that decontrol followed where a quarterly tenant obtained actual possession from his own weekly tenant so as to enable the sub-lessor to recover possession against a subsequent sub-tenant. *Barton* v. *Keeble*, (1928) Ch. 517, appears to be to the same effect, but the case, which deals mainly with questions independent of the Act, seems, on the facts, really to fall within illustration (3) above. But in *Lloyd* v. *Cook* (*ubi sup.*) Scrutton, L.J., expressed the opinion that *Oakley* v. *Wilson* was wrongly decided, and said: "Apart from sect. 12 (7), actual possession by the tenant either of whole or of part cannot decontrol the house," and thought the house was not decontrolled, and *Jenkinson* v. *Wright*, (1924) 2 K. B. 645, so far as it involves the contrary was wrongly decided. Greer and Sankey, L.JJ., however, approved *Jenkinson* v. *Wright*, (1924) 2 K. B. 645, and thought the house was decontrolled. Greer, L.J., however, expressly dealing with the supposed facts, was of opinion that if B. relets to a fresh tenant, D., D. is not protected, and, further, the house is decontrolled, not merely between B. and his tenant, D., should he sub-let to D., but for all purposes and even as between B. and his landlord, A., so that B. himself is no longer entitled to the protection of the Act.

The matter depends on the meaning to be given to the expression "landlord," as used in this section, and that it is not limited to the strict technical sense all members of the Court of Appeal agreed. Scrutton, L.J., thought that "landlord" meant "owner," *i.e.*, freeholder, or a lessee at a rent less than two-thirds of the rateable value (who is made equivalent to the freeholder by sect. 12 (7) of the principal Act above mentioned). Greer, L.J., and Sankey, L.J., however, favoured a wider definition. Sankey, L.J., thought "landlord" meant "any person who, since July 31st, 1923, has let or been entitled to let, conditionally or unconditionally, a dwelling-house to which the Act applies or any part thereof." (In the report, 44 T. L. R. at p. 774, this date appears as August 31st, 1914. But this appears to be *per incuriam*—the date intended is, no doubt, that of the coming into operation of the Rent and Mortgage Interest Restrictions Act, 1923, viz., July 31st, 1923.) The views of Greer, L.J., though expressed in different language, appear substantially to coincide. Roughly, the choice is between making "landlord" include merely "potential lessor" or "potential lessor or sub-lessor."

It should be observed, in reference to illustration (4) above, that a sub-lease of part of the premises by B. would not decontrol that part, the proviso to sub-sect. (1) preventing this.

The rule, however, that decontrol results from the landlord's actual possession is subject to the following important qualifications:—

(a) Sub-lettings of part of the premises. The effect of the first proviso to sub-sect. (1), which deals with sub-lettings, is discussed in the following cases:—

It was decided in *Dunbar* v. *Smith*, (1926) 1 K. B. 360 (Bankes and Scrutton, L.JJ.), that where, ever since August, 1914, the three floors of a dwelling-house have been separately let to different tenants (each floor therefore acquiring protection as a separate dwelling-house within the Acts), if after the passing of this Act the landlord comes into actual possession of the third floor, then that floor is decontrolled. Sub-sect. (1) of the section under consideration, when it speaks of "dwelling-house to which the principal Act applies" and "whole of the dwelling-house," is speaking of the same thing. "Whole of the dwelling-house" refers not to the structure but to the notional dwelling-house brought within the definition of the principal Act (sect. 12 (2)) by conditions as to rent, rateable value, &c., and may therefore refer to a single room or, as in *Dunbar* v. *Smith*, to a single floor. The first proviso to sub-sect. (1) did not apply to prevent the third floor from being decontrolled.

"The proviso," said Scrutton, L.J., "seems to have been inserted to meet the case where there is a landlord, a tenant and a sub-tenant. The first part of the proviso enacts that although the tenant may take possession as against the sub-tenant, that does not entitle the landlord to say that the portion which had been sub-let is thereby taken out of the Act. The effect of the second part of the proviso is that if the landlord, as against a tenant, obtains possession of one part of the premises he had let, but does not obtain possession of the other part because it is sub-let, the part of which he obtains possession is taken out of the Act, while the other part let to the sub-tenant continues within the Act."

Finey v. *Gougoltz*, (1926) 2 K. B. 322, also postulates a trinity of landlord, tenant and sub-tenant in order that the proviso may apply. In that case a tenant for ninety-nine years at a ground rent less than two-thirds of the rateable value of the house, being in possession of the entire house in 1925, sub-let a room. It was held that the room was decontrolled and that there was no statutory restriction on the amount of the sub-tenant's rent. For as the rent paid by the sub-lessor was less than two-thirds of the rateable value, sect. 12 (7) requires the case to be dealt with as if the room had been let by a freeholder. The case in fact becomes identical with *Dunbar* v. *Smith*.

In *Catto* v. *Curry*, (1926) 1 K. B. 461, the freeholder had let to a tenant who enjoyed the protection of the Acts, and had himself sub-let three rooms. The sub-tenant vacated after the present Act came into operation, and the tenant resumed possession. It was held that the three rooms were not decontrolled, and the rent which could be demanded from future sub-lessees thereof was subject to restriction. In *Doulin* v. *Parcell*, 43 T. L. R. 140, it was held that the words of the proviso, "where part of a dwelling-house . . . is lawfully sub-let," refer to the time at which the question of decontrol arises and not to the date of the passing of the Act. Where a tenant in possession of the whole premises at the passing of the Act subsequently sub-let four rooms, these were sub-let within the meaning of the proviso, and the sub-tenant protected.

The general result of the cases, therefore, may be explained by reference to the following example:—If A., the freeholder, has let to B. a house consisting of two floors, and B. sub-lets the upper floor to C., then if C. quits, and B. resumes possession of the upper floor, that floor is not decontrolled. The Acts would still protect B.

against A. in respect of the whole house, and would protect any future sub-tenant of the upper floor against B. On the other hand, if B. quits the ground floor, leaving his sub-tenant C. still in possession of the upper floor, then the ground floor, but not the upper floor, is decontrolled. In respect of the upper floor, C. is protected by the Acts against A. (of whom he will in future hold—sect. 15 (3) of the principal Act), but A. can relet the ground floor free from restriction. The position will be the same if in the above illustration A. is not freeholder, but lessee at a ground rent less than two-thirds of the rateable value (sect. 12 (7) of the principal Act, and see *ante*, p. 123), or (apparently) if A. is a lessee whose own tenancy is for other reasons outside the protection of the Acts (*e.g.*, because the house was let to him with land which let separately would not be less than one-quarter the rateable value of the house (*ante*, p. 77)). It may usefully be noted here that a lessor suing his tenant in ejectment may confine his claim to part of the premises (*Salter* v. *Lask* (No. 1), (1924) 1 K. B. 754).

(b) Where the landlord obtains possession under a judgment after 31st July, 1923, on the ground of non-payment of rent (proviso 2 to sub-sect. (1)).

(c) Where the landlord's possession is not "actual" as required by sub-sect. (3). "Actual possession" in this context is not easy to construe, nor is it clear precisely what cases the concluding words of sub-sect. (3) ("and a landlord shall not be deemed," &c.) are intended to cover. Probably, they apply where, by arrangement to which the landlord is a party, a tenant vacates in favour of a fresh tenant. In *Hall* v. *Rogers* (*infra*) it has since been said that the words are aimed at a "notional" coming into possession between the end of an old tenancy and the beginning of a new, and the view above expressed is also confirmed by *Caledonian Heritable Estates, Ltd.* v. *Methven*, (1927) S. C. 39. In *Hall* v. *Rogers* (1925), 41 T. L. R. 341 (Bankes and Scrutton, L.JJ.), it was said that "actual possession" means actual physical possession, and where the tenant left and the landlord, by his agent, inspected the premises, ascertained they were empty, but, having no key, made no entry, the house was not decontrolled. It will be prudent, therefore, for the lessor to make entry so as to preclude all question, especially as to "change of tenancy." But actual entry is not necessarily essential, and "actual possession" may exist where the tenant vacates and hands the key to the lessor (*Ogden* v. *Fawthorpe*, "Estates Gazette," Oct. 23rd, 1926; *Jewish Maternity Society's Trustees* v. *Garfinkle*

(1926), 42 T. L. R. 589). (In the last case will be found a discussion as to how far "actual possession" is a question of law and how far one of fact.) There may be "actual possession" through the medium of a caretaker or licensee (*Goudge* v. *Broughton*, 44 T. L. R. 761). In *Brooks* v. *Liffen*, (1928) 2 K. B. 347, a long lease at a rent less than two-thirds of the rateable value ran out, and the tenant was immediately granted a quarterly tenancy at a rack rent. At the expiration of this tenancy he was entitled to hold over as statutory tenant, since there had never been actual occupation by the landlord. It was argued that, having regard to sect. 12 (7) of the principal Act, the long lease had to be disregarded, and the tenant under that lease was a "landlord" in actual possession. It was held, however, that sect. 12 (7) did not prevent the Court from taking notice that when the quarterly tenancy ended the landlord was the freeholder and had never had actual possession.

(d) Where judgment for possession was obtained by misrepresentation or concealment of material facts, the Court will in some cases have power under sub-sect. (7) of sect. 5 of the principal Act as amended, to order the house to be re-controlled.

Houses decontrolled in virtue of a lease under sub-sect. (2).—The second class of decontrolled houses comprises those coming within sub-sect. (2), which, after July 31st, 1923, have been validly let for a term of not less than two years ending on a later than the specified date. This date is, as to lettings before 28th May, 1925 (date of the passing of the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925), in England, June 24th, 1925, and in Scotland, May 28th, 1925 (see sect. 19 of the present Act, *post*). As to subsequent lettings before 22nd December, 1927 (the date of the coming into operation of the Expiring Laws Continuance Act, 1927), the date is, in England, 25th December, 1927, and in Scotland, 28th May, 1928. As to lettings subsequent to this and before 19th December, 1928 (the date of the coming into operation of the Expiring Laws Continuance Act, 1928), the date is, in England, 25th December, 1928, and in Scotland, 28th day of May, 1929. As to lettings subsequent to this, the date is, in England, 25th December, 1929, and in Scotland, 28th May, 1930.

It was held by the Court of Appeal in *Bartram* v. *Brown*, 44 T. L. R. 761, that to come within this sub-section the lease must be made to the sitting tenant. This appears to overrule *Elderton* v. *Wright*, "Estates Gazette," Oct. 16th, 1926, where A. let to B., who sub-let to C. for over two years, and the premises were held decontrolled as between B. and C. (whatever might be the position between A. and B.).

Under a letting of a flat consisting of upper and lower floors, of which the lower floor was decontrolled, but the upper one not,

it was held that the flat as a whole constituted a dwelling-house within the Act, and the tenant was protected as to the whole flat (*Langley* v. *Wood*, "Estates Gazette," 5th June, 1926). (*Query*, whether the matter does not in strictness depend on the application of sect. 12 (2), proviso (iii), of the principal Act (*ante*, p. 71).)

Little thought seems to have been given to the effect of decontrol on the mortgage of a house. Where a house is decontrolled except for a sub-let floor, it is perhaps arguable that the mortgagor's position will depend on whether the case still falls within sect. 12 (4) of the principal Act, and difficulties may arise where a mortgaged house is decontrolled and re-controlled under sect. 5 (7) of the principal Act as amended. Possibly it may be argued that the mortgagor's position remains unaffected in virtue of sect. 12 (6) of the principal Act, though the general trend of the decisions is to minimise the effect of that sub-section.

Where the mortgagor is in possession, it would appear that the house is decontrolled, though the mortgagor is, it seems, outside the protection of the Acts for independent reasons (*ante*, p. 58).

3. *Determination of certain leases and tenancies.*—Where before the passing of this Act, the landlord of a dwelling-house to which the principal Act applies has granted to the tenant a valid lease of the dwelling-house for a term ending at some date after the twenty-fourth day of June, nineteen hundred and twenty-three, or has entered into a valid agreement with the tenant for a tenancy for such a term, and the rent thereby reserved is reserved at a rate which after but not before such last-mentioned date exceeds the standard rent and the increases permitted under the principal Act or this Act, the landlord may by three months' notice in writing expiring not earlier than the twenty-first day of December, nineteen hundred and twenty-three, and not later than the thirty-first day of March, nineteen hundred and twenty-four, determine the said lease or tenancy, provided that if within one month of the receipt of such notice the lessee or tenant shall give to the landlord notice in writing that he elects to abide by the said lease or agreement and the terms thereof, then the said lease or agreement shall remain in full force and effect in every respect including the amount of the rent thereby expressed to be reserved unaffected by the principal Act or this Act.

Lapse of time has deprived this section of importance.

4. *Restriction on right to possession.*—The following section shall be substituted for section five of the principal Act, namely:—(*The substituted section is printed* ante, p. 38 *et seq., with a further substitution of Clause IV.*, ante, p. 51, *for the Clauses IV. and V., which the present section introduced. These repealed clauses will be found* post, p. 164.)

5. *Suspension of increase of rent on ground of disrepair.*—(1) Where the tenant of a dwelling-house to which the principal Act applies has obtained from the sanitary authority a certificate that the house is not in a reasonable state of repair, and has served a copy of the certificate upon the landlord, it shall be a good defence to any claim against the tenant for the payment of any increase of rent permitted under paragraph (*c*) or paragraph (*d*) of subsection (1) of section two of the principal Act in respect of any subsequent rental period that the house was not in a reasonable state of repair during that period, and in any proceedings against the tenant for the enforcement of such claim (including proceedings for recovery of possession or ejectment on the ground of non-payment of rent so far as the rent unpaid includes such increase), the production of the said certificate shall be sufficient evidence that the house was and continues to be in the condition therein mentioned unless the contrary is proved:

Provided that this section shall not apply in any case where and so far as the condition of the house is due to the tenant's neglect or default or breach of express agreement.

(2) When, after the issue of any such certificate, the landlord has executed to the satisfaction of the sanitary authority the repairs which require to be executed in order to put the dwelling-house into a reasonable state of repair, the authority shall, on the application of the landlord and upon payment of a fee of one shilling, issue a report to that effect.

Contrast the similar but slightly different sect. 3 (3) of the Rent Restrictions (Notices of Increase) Act, 1923, *ante*, p. 119.

Cp. also sect. 13 of the present Act, which, however, does not operate till after the expiration of the principal Act.

This section to some extent overlaps sect. 2 (2) of the principal Act (*ante*, p. 28), from which it differs in that (1) it involves no application by the tenant to the Court, and (2) is free from the three months' time limit imposed by that sub-section, and (3) depends on the existence of a certificate, whereas under sect. 2 (2) of the principal Act other sufficient evidence of bad condition is permitted. As to the certificate and fee thereon, see sect. 18 (1) and (3), *post*, pp. 140, 141. As to the meaning of repair, see sect. 18 (5), *post*, p. 141.

6. *Notice of increase of rent.*—(1) The county court if satisfied that any error or omission in a notice of intention to increase rent, whether served before or after the passing of this Act, is due to a bonâ fide mistake on the part of the landlord shall have power to amend such notice by correcting any errors and supplying any omissions therein which if not corrected or supplied would render the notice invalid on such terms and conditions as respects arrears of rent or otherwise as appear to the court to be just and reasonable, and if the court so directs, the notice as so amended shall have effect and be deemed to have had effect as a valid notice.

(2) The form of notice in the First Schedule to the principal Act shall be amended by the substitution of the words "date of service of this notice" for the words "date of this notice."

An amendment under this Act would operate so as to make the notice equivalent to notice to quit under the Rent Restrictions (Notices of Increase) Act, 1923 (*Williams* v. *Britannic Merthyr Steam Coal Co., Ltd.*, (1924) 2 K. B. 334). Only defects which would invalidate can be corrected, *e.g.*, apparently the notice could not as a rule be amended to antedate the time for which an increase of rent is to take effect. A notice given under the 1915 Act (which contained no statutory form) was amended under this section in *Chandler* v. *Smart* ("Estates Gazette," April 19th, 1924). See further as to the effect of amendment, sect. 8 of this Act (*post*, p. 133).

It is noteworthy that only the County Court is given this power. For mode of application see Rule 3 of the 1923 Rules, *post*, p. 166.

7. *Permitted increases of rent of sub-tenancies.*—(1) Where part of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-

house to which the principal Act applies, then, in addition to any increases permitted by paragraphs (*a*) to (*e*) of sub-section (1) of section two of the principal Act, an amount not exceeding ten per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of that dwelling-house, and an amount equivalent to five per cent. of the net rent of the dwelling-house comprised in the sub-tenancy shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy.

Thus, if A. has let to a tenant, B., who has sub-let the first floor to C., B., in addition to the increases he is otherwise able to obtain from C., can increase C.'s rent by an additional 10 per cent. on the net rent of the first floor from C. But practically B. will only get half of this increase, for A., in his turn, will be entitled to increase B.'s rent by an additional 5 per cent. (again calculated on the net rent of the first floor).

And it would seem if C. sub-lets one room of the first floor to D., then C. will be able to get from D. an additional 10 per cent. calculated on the net rent of the room in question, while B. will be able to get from C. an additional 5 per cent. on that rent.

But there will be no increase in virtue of this section—

(1) Where the sub-letting is unlawful. (See *ante*, p. 54.) A statutory tenant can sub-let within certain limits (*ante*, p. 92).

(2) Where the sub-letting is of the whole house, *e.g.*, there would be no increase under this section in the illustration above if B. sub-let the whole house and not merely the first floor to C. Similarly, if the first floor being let to C., C. sub-let the whole of it to D., this section would not apply so as to enable B. or C. to obtain their respective increases. But it must be remembered that a sub-lease of the whole premises exposes to risks under sect. 5 (1) (h) of the principal Act, and a statutory tenant could not sub-let the whole premises (*ante*, p. 92).

(3) Where the sub-letting is not such in law. An arrangement with a lodger is sometimes loosely described as a letting or sub-letting, which, indeed, it may be, for lodger is not a word of precise legal significance, and is sometimes used of one who is strictly a tenant. But lodger, as used in contradistinction to the term tenant, denotes one who, though entitled by contract to use

and occupation, has no legal interest in the premises. A tenant taking a lodger of this kind would, of course, not come within this section. The exact legal position of a person described as a lodger will, in practice, sometimes be a difficult question of fact.

The lessor's right to increase by the 5 per cent. depends on the mere fact of the sub-letting, and can be exacted though the lessee is not in fact exacting his own 10 per cent. increase from the sub-tenant.

Where the premises are sub-let and this addition becomes payable, if the premises afterwards cease to be sub-let the increase authorised by this section will, according to the views expressed by the Court of Appeal in *Strickland* v. *Palmer* (*ante*, p. 32), cease to operate.

Subsection (2) of section three of the principal Act shall not apply as respects any increase permitted under this subsection.

Since no statutory notice of increase is required, the position as to these increases, though it is probably the same as that of the other permitted increases (see *ante*, p. 23), is not necessarily so. Presumably the landlord must give some sort of notice that this increase is exacted. It is not easy to say from what date the increase can be made to operate. The application of the first sub-section of sect. 3 of the principal Act is not ousted, and any existing tenancy (other than a statutory one (*Shuter* v. *Hersh*, (1922) 1 K. B. 438; *Felce* v. *Hill*, (1923) W. N. 235)) must therefore be first determined. There seems nothing, however, to prevent this increase on the rent of a statutory tenant from being made forthwith.

(2) Where part of any such dwelling-house is so sub-let the tenant shall, on being so requested in writing by the landlord, supply him, within fourteen days thereafter, with a statement in writing of any sub-letting, giving particulars of occupancy, including the rent charged, and should the tenant without reasonable excuse fail to do so or supply a statement which is false in any material particulars he shall be liable on summary conviction to a fine not exceeding two pounds.

(3) In subsection (6) of section two of the principal Act the expression "landlord" shall, in relation to a sub-tenancy,

be taken to include not only the person who is immediate landlord of the sub-tenant but also the landlord of that person.

8. *Limitation on recovery of overpayments or arrears.*— (1) No increase of rent which becomes payable by reason of an amendment of a notice of increase made by order of the county court under this Act shall be recoverable in respect of any rental period which ended more than six months before the date of the order.

The result is that if the tenant has not paid in accordance with a defective notice, on amendment the increase can only be recovered by the lessor in respect of the period six months prior to amendment. But the tenant, if he has paid, can recover all the overpayments (except in respect of the six months prior to amendment) in full without limit as to time (*Williams* v. *Britannic Merthyr Steam Coal Co., Ltd.*, (1924) 2 K. B. 334).

(2) Any sum paid by a tenant or mortgagor which, under subsection (1) of section fourteen of the principal Act, is recoverable by the tenant or mortgagor shall be recoverable at any time within six months from the date of payment but not afterwards, or in the case of a payment made before the passing of this Act, at any time within six months from the passing of this Act but not afterwards.

Cp. note to sect. 19 (3) of the principal Act.

The effect of this sub-section is that overpayments made after 31st July, 1923 (the coming into operation of the Act), are recoverable within six months after payment. Payments made before that date are no longer recoverable, having ceased so to be, unless proceedings for recovery were commenced on or before January 31st, 1924 (*Truss* v. *Olivier*, 40 T. L. R. 588). "Recoverable" refers to the institution of proceedings and not the obtaining judgment (*Lewis* v. *McKay*, *Algate* v. *Vugler*, *Clark* v. *Potter*, reported together 157 L. T. News. 325, followed by the Court of Appeal in *Diment* v. *Roberts*, (1925) 1 K. B. 9.

The time limit applies to recovery of overpayments by the method of deduction from rent as well as to recovery by action (*Bayley* v. *Walker*, (1925) 1 K. B. 447), and bars recovery by further deduction even where earlier deductions have been made within the six months (*ibid.*). See also *Goklee* v. *Burgener* (1925), 69 S. J. 311 and 44 "Law Notes" (March, 1925), p. 87.

(3) Nothing in this section shall affect the operation of the Rent Restriction (Notices of Increase) Act, 1923.

See on this section generally, Article, 42 Law Notes, 278.

9. *Excessive charges for furniture, &c. taken over in connexion with tenancies.*—(1) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of a dwelling-house to which the principal Act applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and if the price exceeds the reasonable price of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of section eight of the principal Act, including penal provisions, shall apply accordingly.

(2) Where a tenant who by virtue of the principal Act retains possession of a dwelling-house to which that Act applies requires that furniture or other articles shall be purchased as a condition of giving up possession, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and if the price exceeds the reasonable price of the articles the excess shall be treated as a sum asked to be paid as a condition of giving up possession, and the provisions of subsection (2) of section fifteen of the principal Act (including penal provisions) shall apply accordingly.

For sects. 8 and 15 (2) of the principal Act, see *ante*, pp. 60, 95.

This section was thought necessary because the language of the sections in the principal Act was not considered quite large enough to cover the mischief aimed at.

10. *Amendment of provisions of the principal Act as to houses let with furniture, &c.*—(1) For the purposes of proviso (i) to subsection (2) of section twelve of the principal Act (which relates to the exclusion of dwelling-houses from the principal Act in certain circumstances), a dwelling-house

shall not be deemed to be bonâ fide let at a rent which includes payments in respect of attendance or the use of furniture unless the amount of rent which is fairly attributable to the attendance or the use of the furniture, regard being had to the value of the same to the tenant, forms a substantial portion of the whole rent.

See *ante*, p. 73. The omission of any reference to board is curious having regard to the terms of the proviso to sect. 12 (2) of the principal Act.

(2) In sections nine and ten of the principal Act (which relate to limitation of rent of houses let with furniture and penalties for excessive charges for such lettings) the expressions "landlord" and "tenant" shall respectively be substituted for the expressions "lessor" and "lessee."

For the sake, apparently, of uniformity.

11. *Power of county court to determine questions as to standard rent, &c.*—(1) The county court shall have power on the application of a landlord or a tenant to determine summarily any questions as to the amount of the rent, standard rent or net rent of any dwelling-house to which the principal Act applies, or as to the increase of rent permitted under that Act or this Part of this Act.

This overrules *Broomhall* v. *Property Owners and Agents, Ltd.*, (1922) 1 K. B. 311, where it was held that there was no power under sect. 2 (6) of the principal Act to determine the amount of the standard rent as an abstract question.

(2) The Lord Chancellor may, by rules and directions made and given under section seventeen of the principal Act, provide for any questions arising under or in connection with the principal Act or this Part of this Act being referred by consent of the parties interested for final determination by the judge or registrar of a county court sitting as an arbitrator or by an arbitrator appointed by such judge.

See Rule 4 of the 1923 Rules, *post*, p. 167.

PART II.

RESTRICTIONS AFTER EXPIRY OF PRINCIPAL ACT.

12. *Restriction on right to possession in certain cases after the expiry of the principal Act.*—(1) If proceedings are taken against the person who on the twenty-fourth day of June, nineteen hundred and twenty-five (*read "day at the end of which the principal Act expires," see post, p.* 147), is tenant of a dwelling-house to which the principal Act then applies (hereinafter referred to as "the sitting tenant") for the recovery of possession of the dwelling-house or for the ejectment of the tenant therefrom at any time after that day, should it appear to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the sitting tenant by the making or giving of an order or judgment for possession or ejectment, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and if such conditions are complied with the court may, if it thinks fit, discharge or rescind any such order or judgment.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy of the sitting tenant shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall have power to determine what increase of rent (if any) is fair and reasonable, regard being had to the character and condition of the dwelling-house and the rents of similar dwelling-houses in the locality.

(3) The court shall not exercise any of the powers given to it under the foregoing provisions of this section in any case where it is satisfied that greater hardship would be caused to

the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.

(4) In any such proceedings an order or judgment for possession or ejectment against the sitting tenant of the dwelling-house shall not, unless the court otherwise directs, be operative against a sitting tenant of a part of the dwelling-house which, on the twenty-fourth day of June, nineteen hundred and twenty-five (*read "day at the end of which the principal Act expires," see post, p.* 147), is lawfully sub-let to him and is a separate dwelling-house to which the principal Act applies, and the court shall in relation to that part of the dwelling-house and the sitting tenant thereof have all the like powers and jurisdiction as it has in relation to the whole dwelling-house and the sitting tenant thereof.

(5) In order to assist the court in the determination of questions arising under this part of this Act in relation to the rent, character or condition of dwelling-houses, the Minister of Health may establish reference committees to whom such questions may be referred by the court for consideration and report.

(6) The foregoing provisions of this section shall not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838, and any such proceedings shall, on the application of the sitting tenant, be discontinued, subject to any provision that may be made by rules under this Part of this Act for transfer to the county court.

This section and sects. 13-17 will only operate after 25th December, 1929 (in Scotland, May 28th, 1930 (see *post*, p. 147)).

From the above dates all houses become decontrolled in the sense that the main provisions of this legislation cease to operate. But there will remain a modified protection under Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, not, indeed, for the house, but for the sitting tenant of a house still in control on December 25th, 1929. The sitting tenant or sub-tenant, however, of a house already decontrolled on that date under sect. 2 of the Rent and Mortgage Interest Restrictions Act, 1923, *e.g.*, of a house which had already come into the landlord's actual possession at that date, will not enjoy even this modified protection. Where it is enjoyed it will last till five years after the

expiration of the principal Act, unless in virtue of a resolution of both Houses it is earlier repealed by Order in Council. It is perhaps unlikely that this part of the Act will in fact come into operation as it stands, and in the present edition detailed consideration of its provisions has not been thought necessary.

13. *Reduction of rent pending the execution of repairs.*—(1) If the county court on the application of a sitting tenant is satisfied by the production of a certificate of the sanitary authority and such further evidence (if any) as may be adduced that the dwelling-house is not in a reasonable state of repair and that the condition of the dwelling-house is not due to the tenant's neglect or default or breach of express agreement, the court may order that the rent shall be reduced until the court is satisfied on the report of the sanitary authority, or otherwise that the necessary repairs (other than any repairs for which the tenant is liable) have been executed, and subject to the terms of the order the rent shall be payable at such reduced rate as may be specified therein until the court is so satisfied.

(2) The powers of the county court under this section may be exercised by the court in any proceedings against a sitting tenant to which the last preceding section of this Act applies.

14. *Restriction on calling in of mortgages.*—(1) Where a dwelling-house in the occupation of a sitting tenant is subject to a mortgage to which the principal Act applied, the county court may, on the application of the landlord, make an order restraining the mortgagee from calling in his mortgage or taking steps for enforcing his security or for recovering the principal money thereby secured, if it is satisfied that such calling in, enforcement or recovery would cause exceptional hardship to the landlord. The county court may, on the application of the mortgagee or landlord rescind or vary any order so made if satisfied that by reason of any material change in circumstances, rescission or variation is necessary or proper.

(2) The restrictions imposed on a mortgagee by an order under this section may be imposed subject to such conditions as

regards increase of interest or otherwise and for such time as appears to the court to be proper, but so nevertheless that the restrictions shall cease to be operative if at any time after the making of the order—

(a) interest is more than twenty-one days in arrear; or

(b) any covenant by the mortgagor (other than the covenant for the repayment of the principal money secured) is broken or not performed; or

(c) the mortgagor fails to keep the property in a proper state of repair or to pay the interest and instalments of principal recoverable under any prior encumbrance; or

(d) the sitting tenant ceases to be tenant of the dwelling-house.

(3) This section shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage.

15. *Regulations as to reference committees.*—(1) The constitution and procedure of reference committees established under this Part of this Act shall be such as may be prescribed by regulations made by the Minister of Health.

(2) In addition to any questions that may be referred to a reference committee by the county court under this Part of this Act, provision may be made by the regulations for the reference to and determination by a reference committee of any questions in relation to the rent payable or to be paid by a sitting tenant which may be submitted to them by the tenant and landlord.

(3) Before any regulation under this section is made, it shall be laid in draft before both Houses of Parliament, and such regulation shall not be made unless both Houses by resolution approve the draft, either without modification or addition or with modifications or additions to which both Houses agree, but upon such approval being given the Minister

of Health may make the regulation in the form in which it has been approved, and the regulation on being so made shall be of full force and effect.

16. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving full effect to the provisions of this Part of this Act relative to legal proceedings.

17. *Duration of Part II.*—This Part of this Act shall continue in force until the twenty-fourth day of June, nineteen hundred and thirty (*for "24th June,* 1930," *read "five years after the expiration of the principal Act," see post, p.* 147).

Provided that if a resolution is passed by both Houses of Parliament for the repeal of this Part of this Act on some earlier date, it shall be lawful for His Majesty in Council to repeal this Part of this Act on such date as may be specified in that behalf in the resolution.

PART III.

GENERAL.

18. *Certificates of sanitary authorities and definition of repairs.*—(1) For the purposes of the principal Act and this Act, a certificate of a sanitary authority as to the condition of a dwelling-house shall specify what works (if any) require to be executed in order to put the dwelling-house into a reasonable state of repair, and on any application to a sanitary authority for a certificate or report for the purposes aforesaid a fee of one shilling shall be payable, but if the authority, as a result of such application, issues a certificate to a tenant, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(2) On any application to a county agricultural committee for a certificate for the purpose of paragraph (ii) of subsection (1) of section five of the principal Act, a fee shall be

payable by the applicant to the county agricultural committee of such amount as the Minister of Agriculture and Fisheries shall by regulation determine.

By the Rent Restrictions (Fee) Regulations, 1924, dated February 19th, 1924 (S. R. & O. 1924, No. 168), this fee was fixed at such sum not exceeding two guineas as the Committee in accordance with any directions given by the County Council may in each case require.

(3) An instrument purporting to be a certificate or report of a sanitary authority or of a county agricultural committee and to be signed by an officer of the authority or committee shall, without further proof, be taken to be a certificate or report of the authority or committee unless the contrary is proved.

(4) A sanitary authority may appoint a committee for the purposes of the principal Act and this Act, and may delegate, with or without restrictions, to such committee or to an existing committee of the authority all or any of the powers of the authority under the principal Act or this Act.

(5) For the purposes of this Act the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

The meaning of "good and tenantable repair" in a repairing covenant was, in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, defined as such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the class of tenant who would be likely to take it. But this test was held by the Court of Appeal in *Calthorpe* v. *McOscar*, (1924) 1 K. B. 716, to apply only to short lettings where the hypothetical tenant would be the same both at the beginning and end of the lease. See this last case for further discussion of the meaning of "good and tenantable repair" contained in a repairing covenant by a tenant. Under such a covenant the scope of the tenant's liability is not diminished by reason of deterioration in the neighbourhood. The result is that it is not easy to define very precisely the expression as contained in a covenant, nor is it perhaps quite certain that the expression as used in the sub-section must necessarily receive the same interpretation as in a covenant.

19. *Application to Scotland.*—This Act shall apply to Scotland subject to the following modifications:—

(*a*) *The 28th May,* 1928, *shall be substituted for the 25th December,* 1927 (*see post, p.* 147). The twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the Scottish Board of Health shall be substituted for the Minister of Health; references to the registrar of a county court shall not apply; and "exciseable liquor" shall be substituted for "intoxicating liquor";

(*b*) For removing doubts it is hereby declared that nothing in the principal Act affects the operation of the House Letting and Rating (Scotland) Act, 1920, and the reference in subsection (2) of section one of the last mentioned Act to the provisions of Acts repealed by the principal Act shall be construed as a reference to the provisions of section three of the principal Act.

The words italicised were introduced by the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925: see *post*, p. 47, where the operation of the Acts in Scotland is further discussed.

20. *Short title, construction and extent.*—This Act may be cited as the Rent and Mortgage Interest Restrictions Act, 1923, and shall be construed as one with the principal Act, save that this Act shall not apply to Ireland, and the principal Act, the Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923, the Rent Restrictions (Notices of Increase) Act, 1923, and this Act may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923.

PREVENTION OF EVICTION ACT, 1924.

14 & 15 Geo. 5, c. 18.

An Act to prevent unreasonable eviction of tenants.

[14th July, 1924.]

1. *Amendment of* 13 *&* 14 *Geo.* 5, *c.* 32, *s.* 4, *ss.* (1).—Paragraphs (iv) and (v) of subsection (1) of the section which by section four of the Rent and Mortgage Interest Restrictions Act, 1923, is substituted for section five of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, are hereby repealed as respects pending as well as future proceedings, and the following paragraph shall be substituted therefor:

(iv) Where the dwelling-house is reasonably required by the landlord (not being a landlord who has become landlord by purchasing the dwelling-house or any interest therein after the fifth day of May, nineteen hundred and twenty-four) for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the Court is satisfied, having regard to all the circumstances of the case, including any alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

This clause has been incorporated above in sect. 5 of the principal Act, *ante*, pp. 51 and 52, where its effect is discussed.

2. *Application of Act to pending proceedings.*—(1) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the Court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the Court, on application by the tenant, may rescind or vary the order or judgment in such manner and subject to such conditions as the Court shall think fit for the purpose of giving effect to this Act.

Cp. sect. 5 (3) of the principal Act, *ante*, p. 53.

Sect. 1 of the present Act, by its amendment of sect. 5 (1) of the principal Act, made it more difficult for the landlord to obtain possession for personal residence or as a residence for children, and this section meets the case where an order for ejectment was made under the repealed clauses which would not have been made had the present one been already in force. The power of rescission or variation hereby given is purely discretionary, and will only arise where the order has not been already executed before the commencement of this Act, viz., July 14th, 1924.

(2) Where a landlord has, on or after the fifteenth day of April, nineteen hundred and twenty-four, taken possession of a dwelling-house under a judgment or order so rescinded as aforesaid, such possession shall not in any case exclude the dwelling-house from the operation of the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923.

The intention of this sub-section is to prevent possession by the landlord in the circumstances mentioned producing decontrol under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2, *ante*, p. 120.

Since, as mentioned in the note to the last sub-section, the order cannot be rescinded if it was executed before July 14th, 1924, the reference to April 15th, 1924, is a little difficult to follow. The power of rescinding orders given by the last sub-section, as contained in the original Bill when it left the Commons, was made exerciseable even though the order had been executed, unless it had been executed before April 15th, 1924. The Bill was amended in the Lords by making the commencement of the Act the critical date. Presumably, by an oversight, the drafting

of the present sub-section was left unaltered. It would, no doubt, cover a case where after judgment for possession the tenant gives up possession in obedience thereto and without execution issued.

3. *Short title.*—This Act may be cited as the Prevention of Eviction Act, 1924, and shall be construed as one with the Rent and Mortgage Interest (Restrictions) Acts, 1920 and 1923, and those Acts and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924.

RENT AND MORTGAGE INTEREST RESTRITCIONS (CONTINUANCE) ACT, 1925.

15 & 16 Geo. 5, c. 32.

An Act to prolong the duration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, and to postpone the date of expiry of Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, and for purposes consequential thereon. [28th May, 1925.]

1.—(1) The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, shall continue in force until the twenty-fifth day of December, nineteen hundred and twenty-seven, and in Scotland until the twenty-eighth day of May, nineteen hundred and twenty-eight.

(2) Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, shall continue in force until five years after the expiration of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, so amended as aforesaid.

(3) Accordingly the Rent and Mortgage Interest Restrictions Act, 1923, shall have effect as if—

(a) in section one thereof for the reference to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted a reference to the twenty-fifth day of December, nineteen hundred and twenty-seven;

(b) in section two thereof for the words "after the twenty-fourth day of June, nineteen hundred and twenty-six" there were substituted the words "not earlier than one year after the date fixed at the time of which the lease is granted for the expiration of the principal Act";

(c) in section seventeen thereof for the reference to the twenty-fourth day of June, nineteen hundred and thirty, there were substituted a reference to five years after the expiration of the principal Act;

(d) in section twelve thereof for the references to the twenty-fourth day of June, nineteen hundred and twenty-five, there were substituted references to the day at the end of which the principal Act expires;

(e) in section nineteen thereof at the beginning of paragraph (a) there were inserted the words "the twenty-eighth day of May, nineteen hundred and twenty-eight, shall be substituted for the twenty-fifth day of December, nineteen hundred and twenty-seven."

2. This Act may be cited as the Rent and Mortgage Interest Restrictions (Continuance) Act, 1925; and the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924, and this Act may be cited together as the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925.

The amendments effected by sect. 1 (3) have been incorporated in the text of the Rent and Mortgage Interest Restrictions Act, 1923. The drafting of the present statute has facilitated a further extension of these Acts by simple reference in an Expiring Laws Act. The Expiring Laws Continuance Act, 1927 (coming into operation on 22nd December, 1927), accordingly prolonged the operation of the Acts, in England, till 25th December, 1928, and, in Scotland, May 28th, 1929, while the Expiring Laws Continuance Act, 1928 (coming into operation on 19th December, 1928), still further extended their operation till 25th December, 1929, in England, and 28th May, 1930, in Scotland.

APPENDIX I.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

5 & 6 Geo. 5, c. 97.

An Act to restrict, in connection with the present War, the Increase of the Rent of Small Dwelling-houses and the Increase of the Rate of Interest on, and the Calling in of, Securities on such Dwelling-houses. [23rd December, 1915.

1. *Restriction on raising rent or rate of mortgage interest.*—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as herein-after defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically pay-

able by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(a) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(b) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(c) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made

in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage:

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be

called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

2. *Interpretation and application.*—(1) For the purposes of this Act except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

(b) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest:

(c) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed:

(d) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor:

(e) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(a) in the case of a house situate in the metropolitan police district, including therein the City of London, thirty-five pounds;

(b) in the case of a house situate in Scotland, thirty pounds; and

(c) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the pro-

perty in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(b) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

3. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

4. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

"Mortgage and incumbrance" mean a heritable security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means lands and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911; "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff.

(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(b) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891;

(c) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

5. *Short title and duration.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

COURTS (EMERGENCY POWERS) ACT, 1917.

7 & 8 Geo. 5, c. 25.

4. *Power to accept premiums on leases for twenty-one years or upwards.*—(1) Subsection (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916, is hereby repealed.

5. *Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord

or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

7. *Provision as to leases at less than rack rent.*—In subsection (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the subsection there shall be inserted the following words "and this Act shall apply in respect of such dwelling-house "as if no such tenancy existed or had ever existed."

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1918.

8 Geo. 5, c. 7.

1. *Restriction of meaning of landlord in 5 & 6 Geo. 5, c. 97, s. 1 (3).*—Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted:—

> "For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy,"

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed before the passing of this Act, as if this Act had been substituted for that Act in the said subsection:

Provided that this enactment shall not apply in any case where the Court is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupa-

tion of a person engaged or employed in agricultural work of urgent national importance.

2. *Short title.*—This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

9 Geo. 5, c. 7.

An Act to extend, amend and prolong the duration of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act. [2nd April, 1919.

1. *Prolongation of duration of principal Act.*—The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the "principal Act"), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as "the extended period") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

2. *Limited power of increasing rents during the extended period.*—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent:

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. *Limited power of increasing rate of mortgage interest.*—Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage

to which the principal Act applies, if the increase does not exceed one half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection (4) of section one of the principal Act shall apply as if the reference therein to the standard rate included a reference to such increased rate.

4. *Extension of principal Act to higher-rented houses.*—As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(a) in the case of a house situated in the metropolitan police district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds;

(b) in the case of a house situated in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds;

(c) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed twenty-six pounds, and neither exceeds fifty-two pounds;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application to those houses and mortgages the principal Act and the enactments amending that Act shall have effect, subject to the following modifications:—

(i) for subsection (1) of section one of the principal Act, exclusive of the provisoes to that subsection, the following provisions shall be substituted:—

Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in

the manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917;

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen;

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act;

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section;

(v) at the end of paragraph (a) of subsection (1) of section two of the principal Act there shall be inserted the following proviso:—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

5. *Minor amendments of the principal Act.*—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word "until" there were inserted the words "or in respect of any period prior to."

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

6. *Limitation on rent of houses let furnished.*—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section "normal profit" means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

7. *Amendment of definition of standard rent.*—At the end of paragraph (a) of subsection (1) of section two of the principal Act, the following words shall be inserted:—

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

8. *Exception of new houses.*—Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

9. *Application of Act to Scotland.*—In the application of this Act to Scotland—

(a) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority;

(b) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word "dwelling-house" where first occurring therein, of the words "or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. *Application of Act to Ireland.*—In the application of this Act to Ireland—

(a) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(b) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two

of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. *Short title and construction.*—This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1919.

9 & 10 Geo. 5, c. 90.

1. *Orders for possession.*—(1) After the passing of this Act no order or judgment for the recovery of possession of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter called the principal Act) or any of the Acts amending the same applies, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same and performs the other conditions of the tenancy, unless—

(a) the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, and the court considers it reasonable to make such an order or give such judgment; or

(b) the tenant, by sub-letting the dwelling-house or any part thereof, or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make such an order or give such judgment; or

(c) the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, considers it reasonable to make such an order or give such judgment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such dwelling-house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may, if the order or judgment was made or given on the ground that the premises were reasonably required as aforesaid, stay or suspend execution thereof, or postpone the date of possession, for such period or periods as it shall think fit,

either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise as the court shall think fit, and, if such conditions are complied with, the court may, if it shall think fit, discharge or rescind such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, every warrant for delivery of possession of a dwelling-house to which the principal Act or any Act amending the same applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, and for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) This Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(6) In the application of this section to Scotland a reference to profits shall be substituted for the reference to mesne profits.

2. *Short title, construction and repeal.*—(1) This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1919, and shall remain in force until the first day of July nineteen hundred and twenty, and shall be construed as one with the principal Act.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97.	Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	S. 1 (3).
8 Geo. 5, c. 7	Increase of Rent, &c. (Amendment) Act, 1918	The whole Act.
9 Geo. 5, c. 7	Increase of Rent and Mortgage Interest Restrictions) Act, 1919.	S. 5 (2).

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 Geo. 5, c. 17.

[Sect. 5 of this Act is now replaced by a substituted section under sect. 4 of the Rent and Mortgage Interest Restrictions Act, 1923, as amended by the Prevention of Eviction Act, 1924. It is (save for some sub-sections which remain the same in the substituted section) here reprinted for convenience of reference.]

5. *Restriction on right to possession.*—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant threfrom, shall be made or given unless—

(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(b) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bonâ fidé residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or

(e) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation; or

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;

and, in any such case as aforesaid, the Court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7), applied, became the landlord before the fifth day of March, nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and twenty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

(2) (3) (4) and (5) These subsections retain their original shape in the substituted sections and will be found *ante*, p. 52 *et seq.*

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923.

13 & 14 Geo. 5, c. 32.

[Sect. 4 of this Act substituted a fresh sect. 5, replacing the original sect. 5 in the principal Act. This substituted section is printed *ante*, pp. 38 *et seq.*, except that on p. 51, *ante*, a clause introduced by the Prevention of Eviction Act, 1924, appears in place of the two following clauses now repealed and here printed for convenience of comparison.]

(*iv*) *where the landlord or the husband or wife of the landlord became the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age; or*

(*v*) *where the landlord or the husband or wife of the landlord did not become the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.*

APPENDIX II.

STATUTORY RULES AND ORDERS, 1920, No. $\frac{1261}{L.\ 37}$.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS), ENGLAND.

County Court Procedure.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1920, DATED JULY 9, 1920, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5, c. 17).

Preliminary.

The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

On the coming into operation of these Rules the following Rules, viz.:—

The Increase of Rent and Mortgage Interest (War Restriction) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

[Rule 1

Applications under Section 2; *Section* 9; *Section* 12, *subsection* (1 *g*) *or* (3); *Section* 6; *or Section* 5, *subsection* (6).

1. An application to the county court under the Act—

(a) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9; or

(b) to apportion the rent or rateable value of the property under subsection 3 of section 12; or

(c) for leave to distrain under section 6; or

(d) by a member of the tenant's family under section 12, subsection (1 *g*); or

(e) for compensation under section 5, subsection (6);

may be made in the case of (e) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in the district of which the premises are situate.

2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—

(a) to the court in the district of which the mortgaged property is situate; or

(b) to the court in the district of which the mortgagor resides or carries on business; or

(c) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules (other than the applications referred to in rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Preparation, Filing, &c. of Summonses.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office; and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, subsection (2) notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

[Rule 7

Applications to Registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions:—

(a) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(b) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(c) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Decisions of Court.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(a) in the case of an application under section 2 or section 9 or section 5, subsection (6) determine the question raised or make or refuse the order or declaration asked for; or

[Rule 11

(b) in the case of an application under subsection (3) of section 12 apportion the rent or rateable value; or

(c) in the case of an application under section 6 give or refuse leave; or

(d) in the case of an application under section 7 make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(e) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

Power to impose Conditions.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates, Orders or Declarations on Applications.

13. When the court has given its decision on any application, a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

General Provisions as to Procedure on Applications.

14. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15. [*This rule has been annulled by the County Courts Fees Order, 1924. For fees payable in respect of proceedings under the Rent and Mortgage Interest Restrictions Acts, see Sched. I., Section IV., of*

[**Rule 15**

the County Courts Fees Order, 1925. *The material part of this Order is as follows:—*

(i) On application for leave to distrain, for every 10*s.* or fraction thereof of the amount to be distrained for, 6*d.*, maximum fee, 5*s.*

(ii) On an application for apportionment, 10*s.*

(iii) On every other application, 5*s.*

(iv) On a request for arbitration, 1*l.* 10*s.*

In the Lord Chancellor's Circular, dated 13th July, 1925, *the view is expressed that fee No.* (iii), *above, does not apply to applications made to the Court in possession or ejectment actions affected by the Prevention of Eviction Act,* 1924, *s.* 2, *or the Rent, &c. Restrictions Acts,* 1920 *and* 1923, *s.* 3.]

Costs.

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

There followed in the Rules as they originally stood further paragraphs numbered (2), (3), (4) *and* (5). *These paragraphs were revoked by the Rent (Restrictions) Rules,* 1928, *dated December 22nd,* 1928 (post, *p.* 192), *and the following paragraph to stand as paragraph* (2) *of this rule was substituted therefor:—*

"(2) The court may either fix the amount of such costs or direct the scale upon which they are to be taxed. In the event of their not being so fixed or of no such direction being given they shall be taxed upon Column A of the Higher Scale."

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

[Rule 17

(2) The registrar of any Court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

18. Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

Death of Tenant Intestate.

19. Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, subsection 1 (g) of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and therefore give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this subsection if so directed by the judge.

Applications for Stay, Rescission or Variation of Orders or Judgments.

20. An application to the Court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, subsection (2) or (3) may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 9th day of July, 1920.

Birkenhead, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 15 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

James Parker,

J. Towyn Jones.

I concur in the above order as to fees.

Birkenhead, C.

The 9th day of July, 1920.

APPENDIX.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, subsections (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for the determination, pursuant to the above-mentioned Act, of a question [or for a declaration or order] relating to the increase of rent of certain premises [*or* of part, that is to say (*here specify the part*) , of certain premises], to which the said Act applies, situate at , and known as , of which the

applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], the question being [in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], [*or* (*here state the question to be determined or the declaration or order asked for*)] and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that notwithstanding the provisions of the

above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, *subsections* (1) *or* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(a) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the tenant of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities formerly borne by the

respondent, C.D., [*or* by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[*or* (b) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the landlord of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [*or* the applicant, A.B.,], the tenant, that is to say (*here specify the burdens and liabilities transferred*) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*or* (*here state the decision of the Court on the question or matter the subject of the application*).]

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [or the applicant, A.B.,] do, on or before the day of , 19 , to pay to the applicant, A.B., [or to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of £].

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

4.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court being satisfied that the security of the applicant on certain leasehold property situate at , and known as under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to , and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say:—

]

[*Or*, It is ordered that the application of the applicant, A.B., for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at , and known as , dated the day of , 19 , granted by the respondent C.D., to the applicant, A. B. [*or* to , and assigned by him to the applicant, A.B.,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A. B., be allowed as against the respondent, C.D., his costs of his application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19].

[*Or*, And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, *subsection* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for the apportionment of the rent on the 3rd day of August, 1914 [*or* (*if the property was last let before or first let after the 3rd August, 1914, insert the date at which it was so let*; see *Act, section* 12, *subsection* 1 (a) [*or* the rateable value on the 3rd day of August, 1914 [*or* (*if the property was first assessed after that date, insert the date at which it was first assessed*)] of certain property situate at and known as and comprising certain premises [*or* part, that is to say (*here specify the part*) of certain premises] situate at and known as for the purpose of determining the standard rent [*or* the rateable value] of the said premises [*or* of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

On the application of and upon hearing

This Court, for the purpose of determining the standard rent [*or* rateable value] of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date*, on the day of , 19 (*the date on which it was so let*)], shall be apportioned between the said premises [*or* the said part of the said premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]; and

£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 (*the date on which it was first assessed*)], shall

be apportioned between the said premises [*or* the said part of the premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]; and

£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [*or* the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [*or* to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

7.

Summons for Order of Suspension and Declaration relating to Increase of Rent under Section 2, *subsection* (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 2, subsection (2) of the said Act on the part of of for a declaration that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the applicant is the Sanitary Authority state the name of the tenant] is the tenant, and you, the respondent, are the landlord, are not in all

respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2, subsection (2) of the said Act until further order, or for such other declaration, and order in that behalf, as the Court may think fit, and for an order providing for the costs of this application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, *subsection* (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

The Court being satisfied that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or

breach of express agreement doth declare accordingly and doth order, pursuant to Section 2, subsection (2) of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed [*or* (such other declaration or order as the Court thinks fit)].

[*Or* it is ordered that the application of the said be, and the same is hereby dismissed.]

[*Add order as to costs, if any: see Form* 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

9.

Notice of the Application under Section 5, *subsection* (2) *or* (3) *for Stay, Suspension, Discharge, Rescission, or Variation of Order, or Judgment.*

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on , the day of , 19 , at the hour of in the noon, to stay, [suspend, discharge, rescind *or* vary] the order [*or* judgment] made [*or* given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that (*here recite order or judgment*),
and for an order providing for the costs of this application.

And further Take Notice, that the grounds of my intended application are that

(*here set out circumstances*)

Dated this day of , 19 .

(Signed)

Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To (*the respondent or applicant, naming him*),

and to Messrs.
his solicitors,

and to the Registrar of the Court.

10.

Order on Application under Section 5, subsection (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for the stay, suspension [discharge, rescission *or* variation] of the order made [*or* judgment given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that

(*here recite order or judgment*)

and upon hearing

It is ordered that the said order [*or* judgment] be and the same is hereby stayed, suspended [*or* discharged *or* rescinded *or* varied] as follows:—

(*here set out terms of order*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any:* see Form 7.]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and the respondent, naming them*).

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A. B.
(*address and description*) Applicant,

and

C. D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the respondent let certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , to the applicant at a rent of a week [*or* a month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The applicant therefore applies to the Court under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

(a) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the respondent to the applicant is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and

(b) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and

(c) for an order that the amount of any payment of rent in excess of such sum made by the applicant in respect of any period after the passing of the said Act shall be repaid to the applicant, and may, without prejudice to any other mode of recovery, be recovered by the applicant by means of deductions from any subsequent payment of rent; and

(d) for an order providing for the costs of this application.

Dated this day of , 19 .

Applicant
[*or* Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing ,

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the respondent to the applicant of certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (*or as the case may be*) made by the applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the applicant, and may, without prejudice to any other method of recovery, be recovered by the applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered,*

And it is ordered that the respondent do pay the said sum of to the applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered,*

And it is ordered that the respondent do on or before the day of pay to the applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails,*

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

It is ordered that the said application be and the same is hereby dismissed.

[*Add directions, if any, as to costs*

].]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

13 and 14.

For summons and order for leave to distrain adapt forms 5 *and* 6 *under the Consolidated County Courts (Emergency Powers) Rules,* 1918.

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, *subsection* (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, subsection (6) of the said Act, on the part of of , for a declaration that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court

(*here give title of action*)

for possession of [*or* ejectment from] certain premises [*or* of part, that is to say,

(*here specify the part*)

of certain premises]
to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and you the respondent were the landlord, was obtained by misrepresentation [*or* the concealment of material facts] and that the applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [*or* judgment], and for an order ordering you to pay the sum of £ [*or* such sum as shall appear to the Court sufficient] as compensation for such damage or loss, or for such other declaration and order in that behalf as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or

by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of and upon hearing

The Court doth declare and adjudge that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court (*here give title of action*) , for possession of [*or* ejectment from] certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and the respondent was the landlord, was obtained by misrepresentation [*or* the concealment of material facts], and that the applicant is entitled under Section 5, subsection (6) of the said Act to recover against the respondent the sum of £ as compensation for damage or loss sustained by the applicant as the result of the said order [*or* judgment] and it is ordered that the respondent do pay the said sum of £ to the Registrar of this Court on the day of , [*or* it is ordered that the application of the said be, and the same is hereby dismissed].

[*Add order as to costs if any: see Form* 6].

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

1923, No. $\frac{901}{L.\ 16}$.

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

County Court Procedure.

The Rent (Restrictions) Rules, 1923, dated August 7, 1923, made by the Lord Chancellor under the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923 (10 & 11 Geo. 5, c. 17 and 13 & 14 Geo. 5, c. 32).

1. The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O., 1920, No. 1261), (hereinafter referred to as the principal Rules) other than Rules 2, 3, 12, 19 and 20 shall be extended to include applications under Part I. of the Rent and Mortgage Interest Restrictions Act, 1923 (hereinafter referred to as the 1923 Act) except under subsection (2) of section 11, and the forms prescribed by the principal Rules shall be used with the necessary modifications accordingly.

2.—(1) [*This has been annulled by the County Courts Fees Order*, 1924. *See note to principal Rules, Rule* 15, ante, *p.* 169.]

(2) The costs of any such original application under the 1923 Act whether the same could or could not have been made under the principal Act shall be in the absolute discretion of the Court and the Court in every such case shall fix the amount of such costs.

3. The Court may exercise the power of amendment conferred by subsection (1) of section 6 of the 1923 Act either on an original application by landlord or tenant in that behalf as directed by the foregoing Rule 1, or, where proceedings before the Court are pending in which the validity of any notice of increase is in question or is material, on request by either party at any time in the course of those proceedings.

4.—(1) Where parties desire to have any questions arising under the principal Act or Part I. of the 1923 Act settled by arbitration pursuant to the provisions of subsection (2) of section 11 of the 1923 Act, they shall sign and deliver to the County Court of the district in which the demised premises are situate a request in writing in accordance with the form set out in the Appendix

to these Rules, which shall stand as Form 17 in the Appendix to the principal Rules.

(2) On receipt of the application in the case where with the consent of the parties the arbitration is to be before a person nominated by the judge, the judge shall proceed forthwith to nominate an arbitrator and notify the nomination to the parties.

The arbitrator, whether the judge, registrar, or other person, shall, after communication with the parties fix an early date convenient to the parties for the arbitration in the Court Buildings or some other place convenient to the parties, and after hearing the parties or their representatives and the evidence, he shall give his determination in writing either at the arbitration or afterwards as soon as may be and shall deliver the same to each of the parties or their representatives.

(3) The Arbitration Act, 1889 (52 & 53 Vict. c. 49), shall not apply to an arbitration under subsection (2) of section 11 of the 1923 Act.

(4) [*This has been annulled by the County Courts Fees Order*, 1924. *See note to principal Rules, Rule* 15, ante, *p.* 169.]

5. These Rules may be cited as the Rent (Restrictions) Rules, 1923.

Cave, C.

Dated the 7th day of August, 1923.

The Lords Commissioners of His Majesty's Treasury do hereby, with the consent of the Lord Chancellor, order that the fees prescribed by Rules 2 (1) and 4 (4) of the foregoing Rules shall be taken on the proceedings therein mentioned.

George Hennessy,
W. Cope, } Lords Commissioners of His Majesty's Treasury.

I concur in the above Order as to fees.

Cave, C.

Dated the 7th day of August, 1923.

APPENDIX.

17.

FORM OF REQUEST FOR ARBITRATION UNDER SECTION 11 (2).

In the County Court of holden at .

In the Matter of the Rent and Mortgage Interest Restrictions Act, 1923.

Whereas certain questions have arisen between us in relation to the tenancy of

under or in connection with the principal Act or Part I. of the above-mentioned Act of 1923 that is to say

we hereby request the judge or registrar of the above court [or some person to be nominated by the judge]* to act as arbitrator between us and determine the above questions under section 11 (2) of the Act of 1923 such determination to be final and conclusive and binding upon us for all purposes.

Each of us is to bear and pay his own costs but the Court or arbitrator's fee of £1 10*s.* sent herewith is to be borne by us in equal shares.

The arbitrator may view the premises before determining any question. He may also at the request of either of us exercise the power of amending a notice of increase conferred on the Court by section 6 (1) of the Act of 1923.

(Signature.)

* The words in brackets may be struck out if desired by the signatories.

1924. No. $\frac{818}{L. 12}$.

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

County Court Procedure.

The Rent (Restrictions) Rules, 1924, dated August 6, 1924, made by the Lord Chancellor under the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1924 (10 & 11 Geo 5, c. 17; 13 & 14 Geo. 5, c. 32; and 14 & 15 Geo. 5, c. 18).

1. Rule 20 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O., 1920, No. 1261), shall be extended to include applications under section 2, subsection (1) of the Prevention of Eviction Act, 1924 (14 & 15 Geo. 5, c. 18), and where the application is to be heard by the judge either in the first instance or on reference or appeal from the registrar and the judge is not sitting, the registrar may, on application in that behalf and on such terms (if any) as he shall think fit, stay proceedings under the judgment, order, or execution until the matter can be dealt with by the judge.

2. These Rules may be cited as the Rent (Restrictions) Rules, 1924.

Dated the 6th day of August, 1924.

Haldane, C.

1928. No. $\frac{970}{L.\ 30}$.

LANDLORD AND TENANT, ENGLAND.

Rent (Restrictions on Increase of).

County Court Procedure.

The Rent (Restrictions) Rules, 1928, dated December 22, 1928, made by the Lord Chancellor under the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925 (10 & 11 Geo. 5, c. 17; 13 & 14 Geo. 5, c. 32; 14 & 15 Geo. 5, c. 18; and 15 & 16 Geo. 5, c. 32).

1. Paragraphs (2), (3), (4) and (5) of Rule 16 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920 (S. R. & O. 1920 (No. 1261), I., p. 1072), are hereby revoked and the following paragraph, which shall stand as paragraph (2) of that Rule shall be substituted therefore:—

> "(2) The Court may either fix the amount of such costs, or direct the scale upon which they are to be taxed. In the event of their not being so fixed or of no such direction being given they shall be taxed upon Column A of the Higher Scale."

2. These Rules may be cited as the Rent (Restrictions) Rules, 1928, and the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, as amended, shall have effect as further amended by these Rules.

Dated the 22nd day of December, 1928.

Hailsham, C.

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